

THE c<sup>t</sup>  
MODERN PRACTICE  
OF  
DISTRESS  
AND  
REPLEVIN:

WHEREIN IS LAID DOWN THE  
THEORY AND PRACTICE  
OF THAT

*Branch of the Law,*

IN A PLAIN AND EXPLICIT MANNER;

So as to afford Instruction to every Inquirer, whether of the  
Profession or not.

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BY AN OLD PRACTITIONER.

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L O N D O N :

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## ADVERTISEMENT.

**T**HE following Sheets, when first collected and thrown into Form, were solely designed as an Assistant to the Author in the Course of his Business; the Advantages he has since derived from them in an extensive Practice, are his chief Motive for now offering them to the Public, that such of his Profession who have had less Time and Experience may be assisted by his Labours. That this Book might be of more general Use than most Law Productions, the Subject is treated in a plain and explicit Manner, divested of the technical Terms of the Science. The Gentleman, Steward, Rent-Gatherer, Farmer, and others who have any Concern in the Management of Estates, collecting Rents, making Distresses, &c. will find this small Volume a safe, useful and sure Guide, in almost every Matter that can possibly occur in that Department of the Law.

T A B L E



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# T A B L E

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## Inquiries.

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THE

## Modern Practice of Distress and Replevin.

### INTRODUCTION.

Before the remedy directed by the law is shewn, it seems absolutely necessary that the reader be acquainted with the detached parts on which this remedy is grounded; we shall therefore first consider the different kinds of tenure at present in use, the nature and effects of leases, and of the rents reserved thereby.

#### *The different kinds of tenure.*

**T**ENURE in *villenage*, *pillenage*, *franc almoigne*, or free alms, in *capite*, by *knight service*, *grand serjeanty*, and *petit serjeanty*, being abolished by stat. 12 Car. 2. and others, the tenures now in use are as follows:

Tenants in *fee-simple*, and in *fee-tail*.

Tenant in *tail* after possibility of issue extinct.

Tenant in *dower*, and by the *courtesy* of England; tenant for term of life, or for years, upon lease in writing, or lease-parol.

Tenant *at will* by the common law, or by custom.

Tenant *at sufferance*.

Tenant by *copy of court-roll* or verge.

Tenants in *coparcenary*, *joint-tenants*, and *tenants in common*.

*Fee-simple*, whereby a person is seized in lands or tenements to hold to him and his heirs for ever, is the most perfect tenure of any, where unincumbered with judgments, statutes merchant, and of the staple, recognizances, mortgages, wills, pre-contracts, bargains and sales, feofments, fines, amerciaments, jointures, dowers, or fraudulent conveyances. It may also be forfeited for treason or felony, without benefit of clergy.

All freeholds before the stat. of *Westminster de donis conditionalibus*, made 13 Edw. 1. were *fee-simple* at common law; so that a tenant in *tail* was instituted by means of that statute, of which there are two kinds, general and special tail.

The party is said to be tenant in *general tail*, who holds lands or tenements to him or her, and to the heirs of his or her body, lawfully begotten



begotten; but where lands or tenements are settled on a man and his wife, and the heirs of their bodies between them two lawfully to be begotten, this is a tenant in *special tail*; this tenure of special tail may be varied to the heirs-male or female according to the will of the donor in whom the fee-simple is vested.

An estate in tail may be barred by a common recovery; and if the tenant in tail, general or special, die without issue, the fee-simple reverts to the donor, or his lawful heirs.

When an estate is granted to a man and his wife in special tail, and one dies before they have issue, the survivor is *tenant in tail after possibility of issue extinct*; or if they have issue, and such issue die without issue, this tenancy remains in the surviving donee. The several rights of this tenure may be seen in *Coke Lit.*

If a man marries a woman seized of lands or tenements in fee-simple, or general fee-tail, or if his wife is heiress thereto in special tail, and he hath a child or children by her, male or female, born alive, yet if she dies first, whether the children are alive or not, yet he shall, during his life, hold the said lands or tenements during his life as tenant by the *courtesy of England*. If the child or children die as soon as born, if they were heard to cry, or if he can bring sufficient testimony that they or one of them was born alive, he shall hold the lands during his life by this courtesy. This tenure is peculiar to this country only. *Coke Lit.*

A woman who marries a man seized of lands or tenements in fee-simple, or in general tail, or if he is heir in special tail, the wife after his death, whether he leaves issue by her or not, shall have her thirds of the said land as her husband was entitled to during coverture as *tenant in dower*, if she be above nine years of age at her husband's death. Custom varies this tenure; in some places she is entitled to half the produce of the estate; in others to the whole, which she claims as tenant in dower to her husband's estate.

The custom in *Kent* is, that the wife shall have half the produce of her husband's lands while she remains a widow, and without child; but as soon as she marries again, she loses all. If a man marries a woman having lands, &c. he has here the same privilege while he remains a widower, but no longer.

A person holding lands or tenements for his own life, or for the term of another's life, he, as lessee of the said lands or tenements on this tenure, is *tenant for life* therein, and the freehold vests in him. This in law is considered as the lowest kind of freehold. *Coke Lit.*

A tenant for life is punishable for waste, and may commit a forfeiture; and by stat. 4th and 5th *Anne*, all warranties made by him of any lands, &c. the same descending to any person in reversion or remainder, are void.

A man demiseing lands, tenements, &c. to another for a limited number of years, the lessee in law is considered as a *tenant for years* on his entering on the said premises by virtue of such lease. This tenancy may be created by word of mouth, and is called a *parol lease*, and binds the lessor so long as the same was agreed for, if the witnesses are living to prove the same.

A man

A man demiseing lands to another to hold to him at the will of the lessor, by this demise the lessee becomes possessed of such lands, and is *tenant at will* thereof. This tenancy is no longer durable than while the lessor pleases, who can dispossess him of his tenure by ejectment. The lessor in this case cannot oblige the lessee to continue in the lands against his will. If he dislikes, he may give him legal notice, and quit the same. Indeed the holding is reciprocal, and determinable at the will of either party. *Coke Lit.*

If a man holds lands of another by lease, for a term of years, and keeps possession thereof after the said term is expired, such person in law is called a *tenant on sufferance*; this tenancy is begot by the laches of his lessor.

Persons having lands and tenements to hold to them and their heirs in fee-simple, fee-tail, or for the term of their lives, or on any other condition at the will of a superior lord, after the custom of his manor, such persons are called copyholders, or *tenants by copy of court roll*, a copy of such court roll or entry in the court books of the said manor being all the evidence or title deed they have for to shew their right to the said lands, &c.

Copyhold tenures are of ancient date, and vary in different parts of *England*, according to the custom of the respective manors to which they belong; and it is held that a tenant of a copyhold estate is as well inheritable therein as one that hath a fee-simple, provided he complies with the custom of the manor, and performs and pays his services due and of right belonging to the lord thereof.

Tenants in *coparcenery* are of two kinds, viz. parceners at common law, and by custom. By the course of the common law, when a party, either male or female, is seized in an estate in *fee-simple* or *fee-tail*, and dies, leaving issue only daughters, the estate descends to them all equally as co-heirs; or if a man seized of lands dies without issue, the estate descends to his sisters as co-heiresses; or if he has no sisters, and it descends to his aunts, they are also co-heiresses or tenants in coparcenery.

Concerning partition of land in coparcenery, joint-tenancy, and tenancy in common, see stat. 8th and 9th *Will. 3.* and stat. 7th *Ann.*

In *Kent*, some few other places in *England*, and in *North Wales*, if a man is seized in fee simple, or fee-tail, of an estate held by the tenure of *gavelkind*, and has issue, the sons after his death shall be all co-heirs, and equally inherit those lands, &c. and are called *parceners by custom*.

Where there are several coparceners, and one dies leaving issue before partition made, the share or interest of the deceased descends to her issue; and if one dies without issue, the share descends equally to the co-heirs.

When a man seized of an estate in fee doth enfeof several persons to hold to them and their heirs, or to hold to them for the term of their natural lives, or for the life of another, and they become seized by virtue thereof; or if several persons disseise another of an estate to their joint use, such are termed joint-tenants.

The nature of this tenure is, that the whole estate passes to the survivor in whom it vests in fee-simple to him and his heirs. This survivorship takes place among all persons who have joint estates or possession with others in chattels real or personal, as lessees, &c.

Where several joint-tenants for life, and one grants a term out of his moiety for a certain annual rent, but dies before such term is expired, it holds against the survivor; but the rent ceases. Amongst co-heirs or parceners the rent does not cease.

Statutes 31st Hen. 8, 32d Hen. 8, and 8th and 9th Will. 3, concerning partition of lands in coparcenery, joint-tenancy, and tenancy in common, do not concern copyholds.

Persons who have lands, &c. by several, and not joint titles, and the severalty not distinguished, whether in fee-simple, fee-tail, or for life, are deemed *tenants in common*.

If a tenant in common alienates his share to another in fee, or gives it to another in tail, such alienee or donee becomes tenant in common with the other joint-tenants; and if he proves survivor, is entitled to the fee.

The same doctrine which holds amongst tenants in common, in estates in fee-simple, or fee-tail, holds also between tenants for life.

Where two persons have held lands in common undivided, one one half from his ancestors, and the other the remaining half from his ancestors, from whom the estate descended to them undivided from time immemorial, such are tenants in common by *title of prescription*.

The essential difference between joint-tenants and tenants in common consists in this, *joint-tenants* hold the estate by one joint title, and in one right; and *tenants in common* hold by several titles, or by one title and several rights; where joint-tenants enjoy one joint freehold, and tenants in common several.

There are also other tenures, as by mortgage, *elegit*, *ancient demesne*, statute merchant, statute staple, &c.

#### *Of leases, and rents reserved thereby.*

**L**EASES for years reserving rent must be made of things that the lessor thereof can come to distrain. It cannot be reserved by a common person out of any incorporeal inheritance; for if such lease is made by deed in writing, the lessor has an action of debt for the contract, but cannot distrain; and if any rent is reserved on a lease for life, such reservation makes the same void.

If a tenant for life in lands, &c. leases same for a certain number of years, and lessee assigns such lands by parol without deed rendering rent, though such assignment operates as a surrender, yet it is not an express surrender; and if the rent reserved thereon was not good by way of reservation, yet it shall be deemed good by way of contract.

Every quarter's rent is a several debt from the lessee to the lessor, for which the lessor may distrain, or bring distinct actions of debt for each quarter's rent.



In ecclesiastical distributions of testator's or intestate's estates, debt for rent is payable by an executor or administrator before bonds, because it favours of the realty, and arises from the profits of the land received.

By statutes 32d Hen. 8, 13th Eliz. and 18th Eliz. any person seised of lands, tenements, &c. in fee-simple may demise the same for any time or number of years he thinks proper.

A person of full age, being tenant in tail of lands, tenements, &c. may, by deed, demise the same, though they have been let for 20 years, next before such lease made, reserving the former rent, or more, for a term not exceeding three lives, or twenty-one years. In such lease, without impeachment of waste, must be left out, and it must commence from the date or making thereof. If the old lease is subsisting, it must be surrendered or expire within a year after, or the new one, if it continues longer, will be void. This lease will operate against the issue of the tenant in tail, if such tenant die before the same expires. If he should die without issue, the donor may void the term by an entry, so may he in remainder, and accepting of rent thereon does not confirm such lease.

A man possessed of lands, &c. in fee-simple or fee-tail in right of his wife, may by deed demise his wife's lands, to hold to him and his wife; but she must be a party to the lease, and execute the same, and the rent reserved must be to himself and his wife, and to the heirs of his wife. If so made, the lease will operate against the wife, and her heirs after her decease.

A lease made by the lessor to the lessee, from year to year, during their mutual pleasure, after entry is a lease for that year, and until warning be given by one of the parties.

A lease can only be made void by the lessor, that is, by his entry. It may be made voidable by the laches of the lessee, in not paying his rent according to the covenants therein; but if the lessor afterwards accepts the rent, that which before was voidable becomes a good lease by such acceptance.

A lessor of a lease of lands, tenements, &c. for a term of years, may maintain an action of debt for rent against the executor or administrator of his lessee, after assignment made by him of such lease, the assignment not being good till notice thereof given to the lessor, and the arrears of rent paid or tendered; if no arrears, no notice necessary.

If a lessor grants a term at a reserved rent, and afterwards assigns such rent, and the lessee attorns tenant to such assignee, he may maintain a distress or action of debt against the lessee for the rent reserved, when in arrear.

In grants, leases, &c. under the name of lands, are understood not only gardens, meadows, pastures, rivers, woods, moors, waters, marshes, furze, and heath, but messuages, houses, tofts, mills, castles, &c. *Coke Lit.*

Lands will not pass in a deed by the description of a house with the appurtenances.



If a person lets lands, &c. at will, and afterwards *does* any act inconsistent with such letting, the lessee may avail himself thereof to determine such holding; as for example, if the lessor declares the lessee shall hold the premises no longer, the lessee, on knowledge and proof of these words, may deliver up possession of the premises to the lessor.

A lease for a year, reserving a *pepper corn* only, is held to operate as a bargain and sale, and makes the lessee capable of taking a release according to the tenure of the grant.

A lease for ninety-nine years, to hold if two persons so long live, without saying (*or either of them*) will determine on the death of either.

In leases between parties, if same is only sealed by the lessor, and not by the lessee, yet it is good, and will operate against the lessor; and if there is any mistake in the indentures of lease, it will be taken as the deed of the lessor, and the mistake considered only as the act of the transferor.

Rent in arrear on a demise for a certain number of years goes to the executors of the lessor, if he dies, and not to his heirs, because rent once due, becomes a personalty.

Where there is a covenant in a lease, that if the rent be behind and unpaid for such a number of days after the usual day or time of payment, then such lease to be void; in that case, if the lessor does accept the rent after such lapse, it does not make such lease good.

On a bond for performance of the covenants of a lease, if the lessee fails in payment of the rent, such bond is forfeited; for the payment of the rent is part of the condition of the bond: for example, if *A.* lets a parcel of land to *B.* on lease, with a reservation of *5l.* rent to himself, payable at a future day, and *B.* binds himself in a bond of *200l.* to pay such reserved rent, and before any day of payment, *A.* ousts *B.* out of any part of the said demised premises, and he occupies the remainder for the whole term, and refuses to pay any rent, yet the bond is not forfeited; for by ousting the tenant out of part of the demised premises, the whole rent becomes in suspence, as it arose from the lessor's own act; but if one day of payment be past before the ouster, the tenant must either pay the rent, or forfeit his bond; or if the tenant be put out of the land by a stranger, who keeps possession thereof until a day of payment of rent be past, he must pay such rent on the day whereon it is agreed to be paid, or he incurs the forfeiture aforesaid, because his remedy at law is against the stranger.

A man granting a lease on condition that the rent shall be paid at a given time, before that time comes, if the lessor gives the lessee a general release of all actions and demands, this release will not acquit the lessee of the rent, because it was neither due, nor to be paid at the time release was given.

A person having a lease of lands for any given term, &c. and demises same for part of such term, at a reserved rent, in that case he may distrain for the reserved rent, or bring an action of debt for same, because the remainder vests in him.

Where any one holds lands for a term in right of his wife, and demises same to another for a less term, at a reserved rent, and dies, the executors of the husband are entitled to the rent during that term, and at the expiration thereof the remainder of the original term reverts to the wife, who would have been entitled to nothing if her husband had granted the whole term.

A release made to a tenant for a term of years before entry is void; but a release of rent to such tenant before his entry is good.

A general release of all demands does not release rent due on a lease.

A rent granted by two or more tenants *in common*, is *several*; but if they make a lease with a reserved rent, they are entitled to no more than the amount of such reserved rent between them all.

If two or more *copartners* make a lease with a reserved rent, they are entitled to this rent in common, because the reversion remains in them; but if they afterwards grant the reversion exclusive of the rent, they by this act make themselves joint-tenants to the rent.

Where lands have been leased for a term on a reserved rent, and a stranger recovers part of the lands, the tenant must pay to each party in proportion to the quantity that he holds from them respectively. Vide *D'Anver's Gen. Abr.*

Where a lease for lands excepts a close or wood, if a passage through the same be absolutely necessary for the tenant to come at the demised premises, the law gives him a right of passage through the same, notwithstanding such exception.

Acceptance of a new lease for a further term, in idea of law vacates the old one.

Where a tenant for life or years removes his goods out of the house or lands, and the lessor enters therein, this is no surrender of the lease; but if he continues therein after demand made of the said premises by the lessee, an action of trespass will lie for such illegal entry.

The executors of a tenant on lease who has assigned over his term, are not answerable for rent due after his decease; for if a tenant for years assigns his lease, the landlord may charge which of them he will; but if he once accepts of the rent from the assignee, knowing of the assignment, he cannot afterwards bring an action of debt against the lessee for rent due after the assignment: however the lessor or his assignee may bring an action of covenant against the first lessee on this covenant for payment of rent.

Where a lessor grants away the reversion after the assignment of the lessee, the grantee cannot maintain an action of debt against the lessee for the rent.

By stat. 4 and 5 *Ann.* " All grants or conveyances to be made, by  
" fine or otherwise, of any manors or rents, or of the reversion or  
" remainder of any messuages or lands, shall be good and effectual to  
" all intents and purposes, without any attornment of the tenants of  
" any such manors, or of the land out of which such rent shall be  
" issuing, or of the particular tenants upon whose particular estate  
" any such reversions or remainders shall or may be expectant or de-  
" pending, as if attornment had been made.

" Provided

“ Provided nevertheless, That no such tenant shall be prejudiced  
 “ or damaged by payment of any rent to any such grantor or conu-  
 “ sor, or by breach of any condition for non-payment of rent, be-  
 “ fore notice shall be given to him of such grant by the conusee or  
 “ grantee.”

If a man makes a lease to another without any consideration, the lessee may seize to his own use; or if he makes a lease to another and to his heirs for any given term, intending that if the lessee die within the term, in that case his heirs should enjoy the premises during the term, this demise is void; for if the lessee die, his executors, and not his heirs, shall enjoy the term; for by the established law of the land, *all chattels* devolve to the executor, and not to the heir.

By a demise of a house with the appurtenances, no land can pass; if such demise has the words *with all lands thereunto belonging*, in that case the lands used therewith will pass.

If a man makes a lease for a longer term than he has therein, the court of equity will establish such lease for his term.

On a lease assigned to another, if the lessor accepts rent of the assignee, this is deemed sufficient notice to him of the assignment, and he cannot afterwards resort back to the first lessee for the rent.

In a lease of a house, if the lessor excepts *two rooms and a free passage thereto*, if the lessee assigns such lease, and his assignee disturbs the lessor in such right of passage, an action of covenant lies for the disturbance: if it had been in the rooms excepted, no action of covenant would have lain, because they were not demised; but where a lessee agrees to let the lessor have any thing out of a demise, as a *way, common, &c.* he has his redress by action of covenant.

If a lessee of a term puts up any thing in a house for the convenience of his business, he may remove the same at any time during the term; but what he does in beautifying the premises, he cannot remove, the general rule being, that whatever is fixed to the freehold becomes part thereof, and reverts to the lessor.

Rent payable at the four quarterly *feasts*, or within any given number of days after, the lessee is not bound to pay such rent until the last day limited for payment thereof. If there is a clause in the lease, that if the rent be behind by the space of fifteen days (more or less) after any of the *feast days*, then such lease to be void; in this case, if the time limited be fifteen days, the tenant shall have thirty days after any of the said *feasts* to save his lease and pay his rent; but if it be, that if the rent be behind for the space of fifteen days *next* after either of the said *feast days* of payment, in such case the lessee has but fifteen days only allowed him.

The rent of premises on lease, where there are special days limited for payment thereof, must be computed according to the *reddendum* thereof, and not according to the *habendum*; but where the reservation is general, as half yearly, or quarterly, and no special days mentioned, there the half year or quarter must be computed according to the *habendum*.



If a lessor demises premises on lease to a lessee to pay the rent on the four feast days, or within fifteen days after either of them, and the lessor die after either of the said feasts, and before such fifteen days be out, the heir of the lessor shall have the rent, because the *feast day* is but *voluntary*, and the *legal day* of payment is at the end of fifteen days.

If a lessee for years be bound in an obligation for payment of his rent precisely at a day, it is his duty to seek out the lessor, and tender him the rent; but if the bond be to perform the covenants in the lease, he may then tender his rent on the land, (if no particular place be mentioned for payment thereof).

If a man has a *rent service* or *rent charge*, and accepts the same on the last day of payment thereof, and gives a discharge for the same, it will be deemed an acquittance from all arrears due before.

In payment of rent at a certain day, the lessee has all that day, and till night, to pay the same; but if the rent is a large sum, he should have it in readiness before sun-set, that the lessor may have day-light enough to tell his rent; for he is not obliged to take it by candle-light.

A lease for years by parol, or deed poll, from joint-tenants, reserving a rent to one of them, such rent shall enure to both; but if it be by deed indented, it will enure to such one by way of conclusion.

A man holds lands in right of his wife, and they lease the same at a reserved rent, if the husband dies, and the wife, before the rent becomes due, marries again, and such second husband accepts the rent, and dies, this acceptance of the second husband affirms the lease.

A person demising land for life or years at an annual rent, and afterwards enters on the said premises, and takes the profits, by this act the whole rent is discharged, and shall continue suspended while he holds the same.

If a person having a lease for years at a reserved rent, assigns over the same, if he gives his assignee a *release of all demands*, it will be an extinguishment of such reserved rent; but a reserved rent incident to a reversion is not barred by such release.

A tenant may tender his rent on any part of the premises to his landlord on the last day of payment, which tender will save the condition of his lease, though it is not the most *notorious* place.

A tender should be in the current coin of the kingdom, of the whole rent due, without any deduction of taxes or assessments, or any other charges whatsoever; but by the land-tax act, he may now tender his land-tax receipt in part of payment.

The sun-setting is the time the law appoints to demand rent in order for a re-entry, or to tender same to save a re-entry or forfeiture; yet in strictness of law such rent is not due till midnight; for if the lessor dies before midnight, his heirs, and not his executors, shall have the rent.

If a man makes a lease for years, reserving rent *generally*, without saying to whom, the law will deem such rent to be paid to the person who has the reversion.

A lease with a *proviso*, that in case of non-payment of the rent, the lessor may re-enter; in this case if the lessor distrains, he loses his right of re-entry; but he may accept the rent of the lessee, and yet re-enter; but if he afterwards receives the succeeding quarter's rent, he cannot then re-enter; for this act of the lessor purges the lessee of his breach, and establishes his lease.

Entry into an acre of land in the name of the whole, is good, if all such land lies in one county.

A man making a lease for a certain number of years, at a rent payable to him and to his heirs, on condition, that if the same be behind for the space of forty days after the days appointed for payment thereof, that then the lessor and his heirs to re-enter; and after demand made of such rent by lessor, he dies, and his heir in consequence of the condition re-enters, such re-entry is lawful; but had the lessor died after the feast days, and before the forty days, and had not demanded the rent, and his heir had demanded the same on the fortieth day, and on non-payment had re-entered, in such case the re-entry would not have been lawful.

If a man lets a parcel of land by the description of all his meadow land in C. containing twenty acres, yet if the same should be forty acres, it will pass by this demise.

Demises of lands, &c. to take effect a *die dat'* do not commence until the next day after the deed bears date; but if it is with a *habendum a dat'*, or a *confectione indenturae*, it immediately operates.

A demise to hold from the day of the making, or from the day of the date, or from the date, is deemed to commence from the day after the delivery.

A lease to hold from *henceforth* shall be computed from the day of the delivery, and from the making shall be taken *inclusive* from the day of the making, the day of delivery is *inclusive*, and is considered as the first day of the term, if it is made to hold from the day of the date, or day of the making, then the day of the delivery shall be *exclusive*; it is otherwise if to hold from the date, and it is delivered on the same day.

If a *habendum* of a lease be for a term of twenty-one years, without mentioning when the same is to commence, it shall then be deemed to begin from the delivery; or if a lease bear date on days impossible, if the same be limited to begin from the date thereof, it shall take effect and commence from the delivery of such lease as if there was no date thereto.

When a man makes a lease to another for twenty-one years, and afterwards makes another to him, to commence from the expiration of the first term, after the first lease is surrendered, the second shall immediately commence; but it would be otherwise if it had been to commence from the end of the said twenty-one years; for had there been a surrender, yet such second lease would not have commenced till the first term had been expired, because the law makes a distinction between a term and time of years.

Where

Where leases are made for a certain number of years; if two or more persons so long live, this term ceases on the death of all the lessees.

An infant seised of lands in *socage* may make a lease at the age of fifteen years.

A lease for years with the words *demise, grant, and to farm let*, does not empower the lessee to bring an action of trespass; until he has taken actual possession thereof; but the words *bargain and sell* for a pecuniary consideration, though ever so small, if inserted therein, give the party immediate possession as soon as the deed is executed, and enable him to bring the above action.

On letting of lands where there are mines or trees thereon, the lessor cannot enter to take the same without being guilty of a trespass; unless he reserves to himself such a privilege on the demise; but if he enters grounds demised by him to another, he is no trespasser; for the law will presume that he entered to see if waste was done.

The loss of a lease does not affect the term demised thereby, so that the lessee can prove such term is subsisting and undetermined.

All deeds, gifts, grants, and leases, made by a man while under *duress of imprisonment* are voidable, not only by the party making the same, but by his heirs, and those who derive their estates from him.

People unable to read are not compelled to do any act or deed without having a proper person with them, who can read and explain the same; yet if they do such act, it will bind them.

Where in a lease rent is directed to be paid at a particular place off the land, the demand of such rent must be made at the place specified in the lease.

If a lessor wishes to take advantage of a re-entry for non-payment of rent, the person who demands the same must be careful not to demand a penny more or less than due; he must shew the certainty of the rent, and when due, or such demand is not good; nor will a re-entry be given, unless the *demand* be precisely and strictly followed.

In leases of lands at *will*, neither the lessor or lessee can determine such *will* to the prejudice of each other; but the same must be governed and go according to the nature and custom used in holding such lands.

Tenants kept out of their premises by rebellion, civil discord, or any other inevitable accident, must notwithstanding pay their rent, nor can they be relieved in equity.

A lessor of a term, if he accepts the rent of the lessee, should the money received afterwards appear bad or defective in weight, he has by such acceptance barred himself from any remedy by re-entry.

On a lease conditioned that the lessee shall do *no waste*, if he commits waste, and the lessor afterwards accepts the rent, he waives his right of re-entry; if it had been conditioned that *if he committed waste*, that then his estate should cease, in that case, if the lessee commits waste, no acceptance of the rent afterwards will make the lease good.

The words *yielding and paying* in a lease are deemed an express covenant in such lease for the payment of the rent thereof.



In an action of debt for rent on a demise *at will*, it lies on the plaintiff to shew, that the defendant occupied the premises, when he entered, and how long he occupied the same; for his right of action only arises from such occupation.

In an action of debt for rent on *lease*, the plaintiff need not state the entry; for if the defendant never enters, he must pay the rent, the same accruing from the lease, which is the *contract*, and not from the *occupation*.

On a condition of re-entry for non-payment of rent, and an ejectment brought thereon, the confession of lease, entry, and *ouster*, is sufficient, no proof of actual entry and ouster is necessary.

A tenant at will of lands, if his term be out, or he be ousted thereof, if he sows such lands, shall notwithstanding have liberty to reap and carry away his corn; but if he is a tenant on *lease for years*, he shall not have such privilege, because he knew when his lease would determine, and did it at his peril, unless such lease contains a covenant that the lessee shall have his way-going crop.

The doctrine is, that a tenant at *will*, or his executors, shall be entitled only to such things on the land as bring a yearly profit.

A man seised of land in right of his wife, sows the same, and dies, his executors shall be entitled to the corn growing thereon; but if he and his wife had been joint-tenants of such land, the wife on his death would have been entitled to the corn by survivorship.

A lease made by a husband of his wife's lands in his *own name only*, is void after his death; if in their joint names, the term would continue; yet notwithstanding the lease is void, the lessee shall have the corn sown on such lands.

There are three kinds of *estovers* in the law, which are incident to the estate of every tenant, whether for life or years.

*House boot*, being of two kinds, the one to repair the houses, the other to burn, which is called *fire boot*.

There is an *estover* called *plough boot*, stuff to mend the tenant's ploughs, carts, harrows, wains, and for making rakes and forks, for getting in his hay and corn.

The *estover* called *hedge boot*, or *hay boot*, is timber and wood for making gates and stiles, and boughs and bushes for mending and repairing hedges and fences.

*Estover* or *boot* signifies an allowance, or satisfaction; and any of these a tenant may take without assignment of the landlord, unless he be by the landlord restrained by special covenant in his lease, which is usual amongst landlords, especially if the farm be any thing considerable, when they commonly limit the tenant how much *house-boot* or *plough-boot*, or *hedge-boot*, he may take without assignment, and how much by assignment.

If a tenant for life or years cuts down trees, or pulls down houses, or suffers them to fall down, the lessor shall have the trees and timber of the said houses; for the lessee had them only as things annexed to the land, and this severance will not give him a greater estate in them, but his interest is then determined.

The landlord shall likewise have wind-falls; that is, timber-trees blown down by wind and tempest, because they are parcel of his inheritance, so that the tenant for life nor years cannot have them, unless it be to build withal, where houses are in decay; but if they be dotards or pollards without timber, which bear neither leaves nor fruit in summer, the tenant shall have such when they are blown down.

*Estovers* granted to be burnt in an house, go to the person that has the house by whatsoever title; for one is inseparably incident to the other.

Lessees for life or years, tenants in dower or by the curtesy, or tenants in tail after the possibility, &c. have only a special interest or property in the trees, as things annexed to the lands, so long as they are annexed thereunto; but if they or any other sever the trees from the land, then their interest is determined, and the lessor may take the trees as things that are parcel of his inheritance, the interest of the lessee being determined.

If a stranger cuts down a tree, growing upon the land of a lessee for years, and carries it or the bark thereof away, the lessor at his election may have either an action of trover against the stranger, or an action of waste against the lessee; for the property of the timber is always in the lessor.

If one have estovers incertain in ten acres of wood, and five of them descend to him, he shall have the whole out of the residue.

If a man grants to another estovers incertain in such a wood, and afterwards the grantor makes such waste in the wood, as that there is not sufficient store left, out of which the grantee may take his *estovers*; in this case he may have a *quo minus* against the grantor, which is in nature of a prohibition.

*Remedial laws for the protection of landlords, and the recovery of rent in arrear.*

BY stat. 2 *Will. and Mary*, it is enacted, " That from and after the first day of *June*, in the year of our Lord one thousand six hundred and ninety, that where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within five days next after such distress taken, and notice thereof (with the cause of such taking) left at the chief mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to the law; that then and in such case after such distress and notice as aforesaid, and expiration of the said five days, the persons distraining shall and may with the sheriff or under sheriff of the county, or with the constable of the hundred, parish or place, where such distress shall be taken, (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained to be appraised by two sworn appraisers, (whom such sheriff, un-

" de

“ der sheriff or constable, are hereby empowered to swear to appraise  
 “ the same truly, according to the best of their understandings), and  
 “ after such appraisement, shall and may lawfully sell the goods and  
 “ chattels so distrained, for the best price that can be gotten for the  
 “ same, towards satisfaction of the rent, for which the said goods  
 “ and chattels shall be distrained, and of the charges of such distress,  
 “ appraisement and sale, leaving the overplus (if any) in the hands  
 “ of the said sheriff, under-sheriff, or constable for the owner's use.

“ And whereas no sheaves or shocks of corn loose, or in the straw,  
 “ or hay, in any barn or granary, or in any hovel, stack, or rick, can  
 “ by the law be distrained, or otherwise secured for rent, whereby  
 “ landlords are oftentimes cozened and deceived by their tenants,  
 “ who sell their corn, grain and hay to strangers, and remove the  
 “ same from the premises chargeable with such rent, and thereby  
 “ avoid the payment of the same ;

“ It is further enacted by the authority aforesaid, That for remedy-  
 “ ing the said practice and deceit, it shall and may, from and after  
 “ the said first day of *June*, be lawful to and for any person or per-  
 “ sons having rent in arrear, and due upon any such demise, lease or  
 “ contract as aforesaid, to seize and secure any sheaves or cocks of  
 “ corn, or corn loose, or in the straw, or hay, lying or being in any  
 “ barn or granary, or upon any hovel, stack or rick, or otherwise,  
 “ upon any part of the land or ground charged with such rent, and  
 “ to lock up or detain the same in the place where the same shall be  
 “ found, for and in the nature of a distress, until the same shall be re-  
 “ plevied upon such security to be given as aforesaid ; and in default  
 “ of replevying the same as aforesaid, within the term aforesaid, to  
 “ sell the same after such appraisement thereof to be made ; so as ne-  
 “ vertheless such corn, grain or hay, so distrained as aforesaid, be not  
 “ removed by the person or persons distraining, to the damage of the  
 “ owner thereof, out of the place where the same shall be found and  
 “ seized, but be kept there (as impounded) until the same shall be  
 “ replevied, or sold in default of replevying the same within the time  
 “ aforesaid.

“ It is further enacted by the authority aforesaid, That upon pound-  
 “ breach or rescous of goods or chattels distrained for rent, the person  
 “ or persons aggrieved thereby shall, in a special action upon the case,  
 “ for the wrong thereby sustained, recover his and their treble da-  
 “ mages and costs of suit against the offender and offenders in any  
 “ such rescous or pound-breach, any or either of them, or against the  
 “ owner of the goods distrained, in case the same be afterwards found  
 “ to have come to his use or possession.”

By this statute it is provided, “ That in case any such distress and  
 “ sale, as aforesaid, shall be made by virtue or colour of this pre-  
 “ sent act, for rent, pretended to be in arrear or due, where in truth no  
 “ rent is in arrear or due to the person or persons distraining, or to him  
 “ or them in whose name or names, or right, such distress shall be  
 “ taken as aforesaid, that then the owner of such goods and chattels  
 “ distrained and sold as aforesaid, his executors or administrators,  
 “ shall



“ shall and may by action of trespass, or upon the case, to be brought  
“ against the person or persons so distraining, any or either of them, his  
“ or their executors or administrators, recover double the value of the  
“ goods or chattels so *distrained* and *sold*, together with full costs of  
“ suit.”

By stat. 8 *Ann.* it is enacted, “ That no goods upon any tenement  
“ leased shall be taken by any execution, unless the party at whose  
“ suit the execution is sued out, shall, before the removal of such  
“ goods, pay to the landlord of the premises or his bailiff, all money  
“ due for rent for the premises ; provided the arrears do not amount  
“ to more than one year’s rent ; and in case the arrears shall exceed  
“ one year’s rent, then the party at whose suit, &c. paying the said  
“ landlord or his bailiff one year’s rent, may proceed to execute his  
“ judgment ; and the sheriff is required to levy and pay to the plain-  
“ tiff, as well the money paid for rent, as the execution-money.”

It is further enacted, “ That in case any lessee for life or lives,  
“ term of years, at will, or otherwise, of any messuages, lands or  
“ tenements, upon the demise whereof any rents are or shall be re-  
“ served or made payable, shall, from and after the first day of *May*,  
“ fraudulently or clandestinely convey or carry off from such demised  
“ premises his goods or chattels, with intent to prevent the landlord  
“ or lessor from distraining the same for arrears of such rent so reserv-  
“ ed as aforesaid : it shall and may be lawful to and for such lessor or  
“ landlord, or any person or persons by him for that purpose lawfully  
“ empowered, within the space of five days next ensuing such convey-  
“ ing away, or carrying off such goods or chattels as aforesaid, to  
“ take and seize such goods and chattels wherever the same shall be  
“ found, as a distress for the said arrears of such rent ; and the same  
“ to sell or otherwise dispose of in such manner, as if the said goods  
“ and chattels had actually been distrained by such lessor or landlord,  
“ in and upon such demised premises, for such arrears of rent ; any  
“ law, custom or usage to the contrary in any wise notwithstanding.  
“ Provided nevertheless, That nothing in this act contained shall  
“ extend, or be construed to extend, to empower such lessor or land-  
“ lord to take or seize any goods or chattels as a distress for arrears of  
“ rent, which shall be sold *bona fide*, and for a valuable consideration,  
“ before such seizure made.

“ It is further enacted, That it shall and may be lawful for any  
“ person or persons having rent in arrear, or due upon any lease or  
“ demise for life or lives, to bring an action of debt for such arrears  
“ of rent, in the same manner as they might have done in case such  
“ rent were due and reserved upon a lease for years.

“ And that all distresses to be made as aforesaid, shall be liable to  
“ such sales, and in such manner, and the monies arising by such sales  
“ to be distributed in like manner, as by an act made in the second  
“ year of the reign of their late Majesties King *William* and Queen  
“ *Mary*, (entituled, *An act for enabling the sale of goods distrained for*  
“ *rent, in case the rent be not paid in reasonable time*) is in that behalf di-  
“ rected and appointed.

“ And

“ And whereas tenants *pour autre vie*, (that is, for the life of another person) and lessees for years, or at will, frequently hold over the tenements to them demised, after the determination of such leases: and whereas after the determination of such or any other leases, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof; it is enacted, that it shall and may be lawful for any person or persons having any rent in arrear, or due upon any lease for life or lives, or for years, or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined.

“ Provided that such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

“ Nothing in this act contained shall extend, or be construed to extend, to let, hinder, or prejudice her Majesty, her heirs or successors, in the levying, recovering or seizing any debts, fines, penalties, or forfeitures, that are or shall be due, payable or answerable to her Majesty, her heirs or successors, but that it shall and may be lawful for her Majesty, her heirs and successors, to levy, recover, and seize such debts, fines, penalties and forfeitures, in the same manner as if this act had never been made.”

By stat. 4 Geo. 2. it is enacted, “ That in case any tenant or tenants for any term for life, lives, or years, or other person or persons, who are or shall come into possession of any lands, tenements or hereditaments, by, from, or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the determination of such term or terms, and after demand made and notice in writing given, for delivering the possession thereof, by his or their landlords or lessors, or the person or persons, to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his or their agent or agents thereunto lawfully authorised; then and in such case such person or persons, so holding over, shall, for and during the time he, she and they shall so hold over, or keep the person or persons entitled out of possession of the said lands tenements and hereditaments, as aforesaid, pay to the person or persons so kept out of possession, their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements and hereditaments so detained, for so long time as the same are detained, to be recovered in any of his Majesty's courts of record, by action of debt, whereunto the defendant or defendants shall be obliged to give special bail; against the recovering of which said penalty there shall be no relief in equity.

“ It is further enacted, That in all cases between landlord and tenant, from and after the twenty-fourth day of *June* one thousand seven hundred and thirty-one, as often as it shall happen that one

“ half

half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath a right by law to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a declaration in ejectment for the recovery of the demised premises; or in case the same cannot be legally served; or no tenant be in actual possession of the premises; then to affix the same upon the door of any demised messuage; or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments; comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such declaration in ejectment shall stand in the place and stead of a demand and re-entry; and in case of judgment against the casual ejector, or nonsuit for not confessing lease, entry, and *ouster*, it shall be made appear to the court where the said suit is depending; by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors in ejectment had power to re-enter; then and in every such case the lessor or lessors in ejectment shall recover judgment and execution, in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or lessees, his, her, or their assignee or assignees, or other person or persons, claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered on such ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills, for relief in equity, within six calendar months after such execution executed; then and in such case the said lessee or lessees, his, her, or their assignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error for reversal of such judgment, in case the same shall be erroneous; and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if on such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, except for the defendant or defendants not confessing lease, entry, and *ouster*, then and in every such case, such defendant or defendants shall have and recover his, her and their full costs.

“ Nothing in the above act shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do, within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, or person or persons intitled to the remainder or reversion as aforesaid, and perform all the covenants



“ and agreements, which on the part and behalf of the first lessee or lessees are and ought to be performed.

“ It is further enacted, That in case the said lessee or lessees, his, her, or their assignee or assignees, or other person or persons, claiming any right, title, or interest in law or equity, of, in, or to the said lease, shall, within the time aforesaid, file one or more bill or bills for relief in any court of equity, such person or persons shall not have or continue any injunction against the proceedings at law on such ejectment, unless he, she, or they do or shall, within forty days next after a full and perfect answer shall be filed by the lessor or lessors of the plaintiff in such ejectment, bring into court, and lodge with the proper officer such sum and sums of money, as the lessor or lessors of the plaintiff in the said ejectment shall, in his, her, or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed, the lessor or lessors of the plaintiff shall be accountable only for so much, and no more, as he, she, or they shall really and *bona fide* without fraud, deceit or wilful neglect, make of the demised premises, from the time of his, her, or their entering into the actual possession thereof; and if what shall be so made by the lessor or lessors of the plaintiff, happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her, or their assignee or assignees, before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors, or landlord or landlords, what the money so by them made, fell short of the reserved rent, for the time such lessor or lessors of the plaintiff, landlord or landlords, held the said lands.

“ Provided always, and it is further enacted, That if the tenant or tenants, his, her, or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his executors or administrators, or his, her, or their attorney in that cause, or pay into the court where the same cause is depending, all the rent and arrears, together with the costs; then and in such case all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee or lessees, his, her, or their executors, administrators, or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, and they shall have, hold, and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her, or them.

“ And whereas the remedy for recovering rents-seck, rents of assize, and chief rents, are tedious and difficult, it is therefore enacted, That from and after the twenty-fourth day of June 1731,

“ all and every person or persons, bodies politick and corporate, shall  
“ and

“ and may have the like remedy by distress, and by impounding and  
 “ selling the same, in cases of rents-sock, rents of assize, and chief  
 “ rents, which have been duly answered or paid for the space of three  
 “ years, within the space of twenty years before the first day of this  
 “ present session of parliament, or shall be hereafter created, as in  
 “ cases of rent reserved upon lease; any law or usage to the contrary  
 “ notwithstanding.

“ And it is further enacted, That in case any lease shall  
 “ be duly surrendered, in order to be renewed, and a new lease  
 “ made and executed by the chief landlord or landlords, the same  
 “ new lease shall, without a surrender of all or any the under-  
 “ leases, be as good and valid to all intents and purposes, as if all  
 “ the under leases derived thereout had been likewise surrendered at  
 “ or before the taking of such new lease; and all and every person  
 “ and persons, in whom any estate for life or lives, or for years, shall  
 “ from time to time be vested by virtue of such new lease, and his,  
 “ her, and their executors and administrators, shall be entitled to the  
 “ rents, covenants and duties, and have like remedy for recovery  
 “ thereof, and the under-lessees shall hold and enjoy the messuages,  
 “ lands, and tenements, in the respective under-leases comprised, as  
 “ if the original leases, out of which the respective under-leases are  
 “ derived, had been still kept on foot and continued; and the chief  
 “ landlord and landlords shall have, and be intitled to, such and  
 “ the same remedy, by distress or entry in and upon the mes-  
 “ suages, lands, tenements and hereditaments, comprised in any  
 “ such under-lease, for the rents and duties reserved by such new  
 “ lease, so far as the same exceed not the rents and duties reserved  
 “ in the lease, out of which such under-lease was derived, as they  
 “ would have had in case such former lease had been still continued, or  
 “ as they would have had in case the respective under-leases had been  
 “ renewed under such new principal lease; any law, custom, or usage  
 “ to the contrary hereof notwithstanding.

“ Nothing in this act shall extend to that part of *Great Britain*  
 “ called *Scotland*.”

By stat. 11 Geo. 2. c. 19. intituled, “ *An act for the more effectual*  
 “ *securing the payment of rents, and preventing frauds by tenants;*” it is  
 “ enacted, “ That from and after the twenty-fourth day of *June*, in  
 “ the year of our Lord one thousand seven hundred and thirty-  
 “ eight, in case any tenant or tenants, lessee or lessees for life or lives,  
 “ term of years, at will, sufferance or otherwise, of any messuages,  
 “ lands, tenements or hereditaments, upon the demise or holding  
 “ whereof any rent is or shall be reserved, due or made payable,  
 “ shall fraudulently or clandestinely convey away or carry off or  
 “ from such premises, his, her, or their goods or chattels, to  
 “ prevent the landlord or lessor, landlords or lessors, from distraining  
 “ the same for arrears of rent so reserved, due or made payable;  
 “ it shall and may be lawful to and for every landlord or lessor,  
 “ landlords or lessors, within that part of *Great Britain*, called  
 “ *England*, dominion of *Wales*, or the town of *Barwick upon Tweed*,

“ or any person or persons by him, her, or them for that purpose  
 “ lawfully impowered, within the space of thirty days next ensuing  
 “ such conveying away or carrying off such goods or chattels as  
 “ aforesaid, to take and seize such goods and chattels wherever the  
 “ the same shall be found, as a distress for the said arrears of rent;  
 “ and the same to sell, or otherwise to dispose of in such manner  
 “ as if the said goods and chattels had actually been distrained by  
 “ such lessor or landlord, lessors or landlords, in and upon such pre-  
 “ mises for such arrears of rent; any law, custom or usage to the  
 “ contrary in any wise notwithstanding.

“ Provided always, That no landlord or lessor, or other person  
 “ intitled to such arrears of rent, shall take or seize any such goods  
 “ or chattels as a distress for the same, which shall be sold *bona fide*,  
 “ and for a valuable consideration, before such seizure made, to any  
 “ person or persons not privy to such fraud as aforesaid; any thing  
 “ herein contained to the contrary notwithstanding.

“ It is further enacted, That from and after the said twenty-  
 “ fourth day of *June*, if any such tenant or lessee shall fraudulently  
 “ remove and convey away his or her goods or chattels as aforesaid,  
 “ or if any person or persons shall wilfully and knowingly aid or assist  
 “ any such tenant or lessee in such fraudulent conveying away or  
 “ carrying off any part of his or her goods or chattels, or in con-  
 “ cealing the same; all and every person or persons so offending  
 “ shall forfeit and pay to the landlord or landlords, lessor or lessors,  
 “ from whose estate such goods and chattels were fraudulently car-  
 “ ried off as aforesaid, double the value of the goods by him, her  
 “ or them respectively carried off or concealed as aforesaid, to be re-  
 “ covered by action of debt in any of his Majesty's courts of record  
 “ at *Westminster*, or in the courts of session in the counties palatine of  
 “ *Chester*, *Lancaster*, or *Durham* respectively, or in the courts of  
 “ grand sessions in *Wales*; wherein no essoin, protection or wager of  
 “ law shall be allowed, nor more than one imparlance.

“ It is also enacted, That where the goods and chattels so fraudu-  
 “ lently carried off or concealed, shall not exceed the value of fifty  
 “ pounds, it shall and may be lawful for the landlord or landlords,  
 “ from whose estate such goods or chattels were removed, his, her, or  
 “ their bailiffs, servant or agent, in his, her, or their behalf, to ex-  
 “ hibit a complaint in writing against such offender or offenders be-  
 “ fore two or more justices of the peace of the same county, residing  
 “ near the place whence such goods and chattels were removed, or  
 “ near the place where the same were found, not being interested  
 “ in the lands or tenements whence such goods were removed; who  
 “ may summon the parties concerned, examine the fact and all  
 “ proper witnesses upon oath, or if any such witnesses be one of the  
 “ people called *quakers*, upon affirmation as required by law; and in  
 “ a summary way determine whether such person or persons be guilty  
 “ of the offence with which he or they are charged; and to inquire  
 “ in like manner of the value of the goods and chattels by him, her,  
 “ or them respectively so fraudulently carried off or concealed as  
 “ aforesaid;



“aforesaid; and upon full proof of the offence, by order under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords, his, her, or their bailiff, servant or agent, at such time as the said justices shall appoint: And in case the offender or offenders having notice of such order, shall refuse or neglect so to do, may and shall, by warrant under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders; and for want of such distress may commit the offender or offenders to the house of correction, there to be kept to hard labour, without bail or mainprize, for the space of six months, unless the money so ordered to be paid, as aforesaid, shall be sooner satisfied.

“Provided also, That it shall and may be lawful for any person, who thinks himself aggrieved by such order of the said two justices, to appeal to the justices of peace at their next general or quarter-sessions to be held for the same county, riding, or division of such county, who may and shall hear and determine such appeal, and give such costs to either party as they shall think reasonable, whose determination therein shall be final.

“Provided also, That where the party appealing shall enter into a recognizance with one or two sufficient surety or sureties, in double the sum so ordered to be paid, with condition to appear at such general or quarter-sessions, the order of the said two justices shall not be executed against him in the mean time.

“And it is further enacted, That where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent; it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver, or other person or persons empowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his, her, or their assistance, the constable, headborough, borsholder, or other peace-officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and in case of a dwelling-house, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the day-time to break open and enter into such house, barn, stable, out-house, yard, close, and place; and to take and seize such goods and chattels for the said arrears of rent, as he, she or they might have done by virtue of this or any former act, if such goods and chattels had been put in any open field or place.

“And

" And it is further enacted, That from and after the said twenty-  
 " fourth day of *June*, which shall be in the year of our Lord  
 " 1738, it shall and may be lawful to and for every lessor or land-  
 " lord, lessors, or landlords, or his, her, or their steward, bailiff,  
 " receiver, or other persons impowered by him, her, or them, to take  
 " and seize, as a distress for arrears of rent, any cattle or stock of  
 " their respective tenant or tenants, feeding or depasturing upon any  
 " common, appendant or appurtenant, or any ways belonging to all  
 " or any part of the premises demised or holden; and also to take  
 " and seize all sorts of corn and grass, hops, roots, fruits, pulse, or  
 " other product whatsoever, which shall be growing on any part of  
 " the estates so demised or holden, as a distress for arrears of rent;  
 " and the same to cut, gather, make, cure, carry, and lay up, when  
 " ripe, in the barns or other proper place on the premises so de-  
 " mised or holden; and in case there shall be no barn or proper place  
 " on the premises so demised or holden, then in any other barn or  
 " proper place which such lessor or landlord, lessors or landlords shall  
 " hire, or otherwise procure for that purpose, and as near as may  
 " be to the premises; and in convenient time to appraise, sell, or  
 " otherwise dispose of the same, towards satisfaction of the rent for  
 " which such distress shall have been taken, and of the charges of  
 " such distress, appraisement, and sale, in the same manner as other  
 " goods or chattels may be seized, distrained, and disposed of; and  
 " the appraisement thereof to be taken when cut, gathered, cured, and  
 " made, and not before.

" Provided always, That notice of the place where the goods and  
 " chattels so distrained shall be lodged or deposited, shall, within the  
 " space of one week after the lodging or depositing thereof in such  
 " place, be given to such lessee or tenant, or left at the last place of  
 " his or her abode; and that if after any distress for arrears of rent so  
 " taken, of corn, grass, hops, roots, fruits, pulse, or other pro-  
 " duct which shall be growing as aforesaid, and any time before  
 " the same shall be ripe and cut, cured or gathered, the tenant or  
 " lessee, his or her executors, administrators or assigns, shall pay, or  
 " cause to be paid to the lessor or landlord, lessors or landlords, for  
 " whom such distress shall be taken, or to the steward or other per-  
 " son usually employed to receive the rent of such lessor or lessors,  
 " landlord or landlords, the whole rent which shall be then in arrear,  
 " together with the full costs and charges of making such distress,  
 " and which shall have been occasioned thereby; that then, and upon  
 " such payment, or lawful tender thereof actually made, whereby  
 " the end of such distress will be fully answered, the same and  
 " every part thereof shall cease; and the corn, grass, hops, roots,  
 " fruits, pulse, or other product so distrained, shall be delivered up  
 " to the lessee or tenant, his or her executors, administrators or as-  
 " signs; any thing herein before contained to the contrary notwith-  
 " standing.

" And it is also enacted, That from and after the said twenty-  
 " fourth day of *June* one thousand seven hundred and thirty-eight,  
 " it

"it shall and may be lawful to and for any person or persons lawfully  
 "taking any distress for any kind of rent, to impound or otherwise  
 "secure the distress so made, of what nature or kind soever it may be,  
 "in such place, or on such part of the premises chargeable with the  
 "rent, as shall be most fit and convenient for the impounding and  
 "securing such distress; and to appraise, sell and dispose of the same  
 "upon the premises, in like manner, and under the like directions  
 "and restraints to all intents and purposes, as any person taking a  
 "distress for rent may now do off the premises, by virtue of an act  
 "made in the second year of the reign of king *William* and queen  
 "Mary, intituled, *An act for enabling the sale of goods distrained for*  
 "rent, in case the rent be not paid in a reasonable time; or of one other  
 "act made in the fourth year of his present majesty, intituled, *An*  
 "act for the more effectual preventing frauds committed by tenants, and for  
 "the more easy recovery of rents and renewal of leases; and that it shall  
 "and may be lawful to and for any person or persons whatsoever,  
 "to come and go to or from such place or part of the said premises,  
 "where any distress for rent shall be impounded and secured, as  
 "aforesaid, in order to view, appraise, and buy, and also in order to  
 "carry off or remove the same; on account of the purchaser thereof;  
 "and that if any pound-breach or rescous shall be made of any goods  
 "and chattels, or stock distrained for rent, and impounded, or other-  
 "wise secured by virtue of this act, the person or persons aggrieved  
 "thereby shall have the like remedy, as, in cases of pound-breach, or  
 "rescous, is given and provided by the said statute.

"It is also enacted, That from and after the said twenty-fourth  
 "day of *June* in the year of our Lord one thousand seven hundred  
 "and thirty-eight, all and every attornment and attornments of any  
 "tenant or tenants of any messuages, lands, tenements, or heredita-  
 "ments, within that part of *Great Britain* called *England*, dominion  
 "of *Wales*, or town of *Berwick upon Tweed*, shall be absolutely null  
 "and void to all intents and purposes whatsoever; and the possession  
 "of their respective landlord or landlords, lessor or lessors, shall not  
 "be deemed or construed to be any wise charged, altered or affected  
 "by any such attornment or attornments: Provided always, That  
 "nothing herein contained shall extend to vacate or affect any at-  
 "tornment made pursuant to, and in consequence of some judgment  
 "at law, or decree or order of a court of equity, or made with the  
 "privity and consent of the landlord or landlords, lessor or lessors, or  
 "to any mortgagee, after the mortgage is become forfeited.

"It is also further enacted, That from and after the said twenty-  
 "fourth day of *June* one thousand seven hundred and thirty-eight,  
 "every tenant, to whom any declaration in ejectment shall be de-  
 "livered for any lands, tenements, or hereditaments, in that part of  
 "*Great Britain* called *England*, dominion of *Wales*, or town of *Ber-*  
 "*wick upon Tweed*, shall forthwith give notice thereof to his, or her,  
 "landlord or landlords, or to his, her, or to their bailiff or receiver,  
 "under penalty of forfeiting the value of 3 years improved or rack-rent  
 "of the premises so demised, or holden in the possession of such te-  
 "nant,



“ nant, to the person of whom he or she holds, to be recovered by  
 “ action of debt, to be brought in any of his Majesty's courts of  
 “ record at *Westminster*, or in the counties palatine of *Chester*, *Lan-*  
 “ *caster*, and *Durham*, respectively; or in the courts of grand sessions  
 “ in *Wales*, wherein no essoin, protection, or wager of law, shall be  
 “ allowed, nor above one imparlance.

“ And it is further enacted, That it shall and may be lawful for  
 “ the court, where such ejectment shall be brought; to suffer the  
 “ landlord or landlords to make him, her, or themselves defendant or  
 “ defendants, by joining with the tenant or tenants, to whom such de-  
 “ claration in ejectment shall be delivered, in case he or they shall ap-  
 “ pear; but in case such tenant or tenants shall refuse or neglect to ap-  
 “ pear, judgment shall be signed against the casual ejector for want of  
 “ such appearance; but if the landlord or landlords of any part of the  
 “ lands, tenements or hereditaments, for which such ejectment was  
 “ brought, shall desire to appear by himself or themselves, and con-  
 “ sent to enter into the like rule, that, by the course of the court;  
 “ the tenant in possession, in case he or she had appeared, ought to  
 “ have done; then the court, where such ejectment shall be brought;  
 “ shall and may permit such landlord or landlords so to do, and order  
 “ a stay of execution upon such judgment against the casual ejector;  
 “ until they shall make further order therein.

“ And to obviate some difficulties that many times occur in the  
 “ recovery of rents, where the demises are not by deed, it is further  
 “ enacted, That from and after the said twenty-fourth day of *June*  
 “ 1738, it shall and may be lawful to and for the landlord or landlords,  
 “ where the agreement is not by deed, to recover a reasonable satisf-  
 “ faction for the lands, tenements, or hereditaments, held or occupied  
 “ by the defendant or defendants, in an action on the case, for the  
 “ use and occupation of what was so held or enjoyed; and if in evi-  
 “ dence on the trial of such action any parol demise, or any agreement  
 “ (not being by deed) whereon a certain rent was reserved, shall ap-  
 “ pear, the plaintiff in such action shall not therefore be nonsuited,  
 “ but may make use thereof as an evidence of the *quantum* of the da-  
 “ mages to be recovered.

“ It is also enacted, That from and after the twenty-fourth day of  
 “ *June* one thousand seven hundred and thirty-eight, where any ten-  
 “ ant for life shall happen to die before or on the day on which any  
 “ rent was reserved, or made payable upon any demise or lease of any  
 “ lands, tenements, or hereditaments, which determined on the death  
 “ of such tenant for life, that the executors or administrators of such  
 “ tenant for life shall and may, in an action on the case, recover of  
 “ and from such under-tenant or under-tenants of such lands, tene-  
 “ ments, or hereditaments, if such tenant for life dies on the day on  
 “ which the same was made payable, the whole, or if before such  
 “ day, then a proportion of such rent, according to the time such  
 “ tenant for life lived of the last year, or quarter of a year, or other  
 “ time in which the said rent was growing due, as aforesaid, making  
 “ all just allowances, or a proportionable part thereof respectively.

*vide Page 25 in the Volume intitled*  
*Heads of acts*

“ And

And for a tax by parliament, a distress may be justified throughout all the village. 11 H. 7. 18 E. 3. 11.

And a person may seise a herriot-service in any place where he finds it, though not within his fee. 6 E. 3. 208.

If a man distrains cattle, and puts them in pound, and then takes them out, he may distrain, or take them again in any place. 24 H. 6. 18.

Yet for rent or other thing due for any lands or tenements a man cannot distrain but upon the same land &c. charged therewith: but if he comes to distrain, and the owner seeing his purpose drives away the beasts, or carries out the goods in his view, he may well pursue; and if he take it presently on such fresh pursuit, though in another's ground or house, or in the highway, the taking is lawful, let who will be the owner of the goods. Vide 11 H. 74. 33 H. 6. 52. 34 H. 6. 2 E. 4. 6. Plowd. 38. 1 Roll. Abr. 671. 1 Inst. 161. 2 Inst. 132.

But by stat. 11 Geo. 2. cap. 19. lessors or landlords, or persons empowered by them, may take and seise as a distress for arrears of rent, any cattle or stock of their tenant, feeding or depasturing upon any common appendant or appurtenant, or any ways belonging to all or any part of the premises.

So if the lord distrains within his fee, and the tenant drives them out of his fee, he may take them again in any place. 44 E. 3. 29.

So where a bailiff attaches a horse which is rescued, and carried into another county, he may on fresh pursuit take him again in any county. 33 H. 6. 52. and 55. 34 H. 6. 18. Plowd. 38.

If a man comes into a common inn, his goods, or beasts shall not be distrained there; for that would be very prejudicial to the public good. 3 E. 3. Distress 19.

Yet cattle coming to London, to make profit thereof (for so was the pleading) were distrained in a close they were lodged in on the road, for rent of the land, and adjudged a good distress. 2 Lutw. 1165. 3 Lev. 260. Vide 3 Cro. 549, 628.

But afterwards on a bill of Chancery it was decreed, the owner should be repaid the value of his cattle, and all his charges both in law and equity, because the landlord had been guilty of a fraud, by encouraging and giving leave to the owner to put in his cattle, and then distraining them contrary to the faith of his own leave so given. 2 Vern. 129, 130.

If one turns his cattle into land charged with a rent-charge, they may be distrained upon the land, though neither *levant* or *couchant* there; *contra* if they escape. 15 H. 7. 17. Vide 2 Leon. 7. 2 Vern. 131.

The lord may enter the house of his tenant to distrain, if the door be open. 38 H. 6. 26.

But if he finds the house fast with a bar &c. and break in to distrain, it is wrongful. Fitz. Distress 21.

The lord may distrain the cattle of the patron within his glebe, 33 H. 6. 35.

A man cannot distrain but in the land &c. leased, except the lessee grants it may be taken on other land &c. 9 H. 6. 9.

Fish in a pool or pond cannot be distrained. 1 Cro. 188.

But *vide Dyer* 117. A distress for an annual sum upon the river Thames.

The difference where cattle &c. are distrainable or not, when put by the owner &c. into any place, and when they escape thither, may be seen in *Lutw.* 2579, 1580. 2 *Vern.* 131.

*What things are not distrainable.*

**S**UCH things of which no replevin lies cannot be distrained, because they cannot be known again; as money cannot be distrained, unless it be in a bag sealed. 22 E. 4. 50. *Fitz. Distress* 14. 1 *Roll. Rep.* 59.

Fishes in a pond cannot be distrained. 1 Cro. 188. Nor poultry. 2 *Inst.* 133.

Cattle of the plough shall not, if there be other distress sufficient besides. *Dyer* 312. *Co. Lit.* 47.

An anvil in a smith's shop shall not. 14 H. 8. 25.

Nor a mill-stone that is severed for pricking &c. *Ibid.*

Nor any tools or instruments of a man's trade. *Co. Lit.* 47.

Nor the books of a scholar. *Ibid.*

Nor a man's wearing apparel. 2 *Inst.* 133.

Nor a garment or cloth in a taylor or weaver's shop. 22 E. 4. 40. 10 H. 7. 21. *Co. Lit.* 47.

Nor sacks of corn or meal in a mill. *Co. Lit.* 29. 47. or in a market. *Ibid.*

Nor corn growing, nor after it is ground. 18 E. 3. 4.

Nor a horse in a smith's shop, or in a hoftry or inn. *Ibid.*

Nor while the rider is on his back, *i. e.* for rent. *Vide Fitz. Refcous* 14. *Cro. El.* 550.

But *contra* for damage-feasant. 1 *Vent.* 36. 1 *Sid.* 440. *Quere.*

Sheaves or shocks of corn &c. not in a waggon or cart cannot be distrained, because there can be no return, nor does a replevin lie of them. 2 H. 4. 15. 22 E. 4. 50. 11 H. 7. 14. 21 H. 7. 39. 18 E. 3. 4. *sed vide stat.* 2 *W. & M. cap.* 5. *post.*

Also by the distress and carriage there would be loss and damage by shedding &c. 1 *Roll. Abr.* 666.

Cattle put into *black-acre*, and straying into *white-acre*, for default of inclosure, cannot be distrained. *Dyer* 365, and 317. 39 E. 3. 3. For no default was in the owner of the cattle. *Ibid.*

Cattle delivered by the sheriff to the tenant in dower for seisin of rent, shall not be distrained for arrears of rent of the same lands. 40 E. 3. 22.

Yarn brought on a horse for a neighbour to weigh, cannot be distrained, because it was brought thither only for a special intent. *M.* 39, 40 *Eliz.* in *C. B.* adjudged. *Vide Cro. El.* 596. *Salk.* 250.

Nor



Nor any thing that is in custody of the law, while it so continues; as things distrained damage-feasant, goods taken in execution &c.

“ But by stat. 8 *Annæ*, goods &c. taken in execution may be seised by the landlord for rent, if only a year due. And if any tenant removes his goods clandestinely &c. the landlord may within five day after seise &c. and sell. *Proviso*, not to seise or take goods &c. sold *bona fide* for valuable consideration before seisure made.”

But this time of five days is enlarged to thirty days by stat. 11 *Geo.*

2. *cap.* 19.

By the stat. *de districtione scaccarii*, 51 *H.* 3. none shall be distrained by the beasts that gain, i. e. manure his land, nor by his sheep, but until another distress or chattels sufficient be found, (except for damage-feasant) which extends to all distresses, as well at the suit of the King, as of a subject. 2 *Inst.* 133.

But no distress can be taken on the King's lands while in his possession.

Nor can a covenable distress be made of armour or apparel, or jewels, so long as there are others sufficient. Nor of sheep, saddle-horses, beasts of the plough, poultry, or fish. 2 *Inst.* 133. *sed quere*.

Nor can two distresses be taken for one and the same rent. *Cro. El.* 13. *Mo.* 7.

Except there were not sufficient at the time of first taking. *Vide Lutw.* 1536.

Yet by the stat. 17 *Car.* 2. *cap.* 7. where the cattle &c. distrained are not of the full value of the arrears for which they are distrained, the party, his executors and administrators, may distress again.

### What are distrainable.

**A**LL such things of which a replevin lies, and which may be known again, and restored to the owner intire, and are not naturally wild, may be distrained. 1 *Roll. Abr.* 667.

As money in a sealed bag. 22 *E.* 4. 50. 1 *Roll. Rep.* 59.

So may a cart or waggon full of corn or grain, *Ibid.* 2 *H.* 4. 19. 2 *Inst.* 82. 1 *Jo.* 197. 2 *Mod.* 61.

Or horse laden with sheaves &c. 22 *E.* 4. 50.

And other goods may be distrained besides cattle. 18 *E.* 3. 4.

Also if a horse be laden with sheaves, it seems the horse only, for sheaves only, may be distrained for services. 1 *Roll. Abr.* 667.

And though a horse with the rider on him cannot be distrained for rent, yet it seems he may if damage-feasant, and may be led to the pound with the rider on his back. 1 *Vent.* 36. 1 *Sid.* 440.

So horses &c. drawing a cart laden, may be severed from it, and distrained for rent-service. 1 *Sid.* 422. 440.

So though there be a servant or other person in the cart. 1 *Vent.* 36. 2 *Keb.* 529, 595, 631.

Yet it has been held otherwise for rent, though allowed for damage-feasant. *Vide Cro. El.* 7. 8. *Mar.* 91.

And though formerly a man could not distrain for rents or services, any hay or loose corn in heaps, or sacks, or in the straw, *vide Fitz. Avovery* 189. 1 *Roll. Abr.* 667. 15 &c. yet now by stat. 2 *W. & M. sess.* 1. c. 5. "Any person having any rent arrear due upon any lease or contract, may seise (or distrain) any sheaves or cocks of corn, or corn loose, or in the straw, or hay in any barn or granary, or upon any hovel, stack or rick, or otherwise, upon the lands charged with such rent, and lock up or detain the same, where found, as a distress replevied."

Corn and other fruits of the earth were formerly not distrainable until severed, but now by statute 11 *Geo. 2. cap.* 19. *sess.* 8. all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, growing on the premises, may be distrained for rent; and the tenant is to have notice of the place where deposited &c. within a week after; and if he pay or tender the rent, and costs and charges before the produce is ripe, cut, or gathered, the distress is to cease.

The household furniture of a lodger by the original landlord.

### Of excessive distresses.

A Distress of more than the value could not be reckoned excessive for the expences of knights of parliament, because the King was in a manner party. 13 *H. 4. 2 Inst.* 107, 167.

And no distress could be said excessive that was taken for homage or fealty, because of the high esteem thereof in law. 27 *Aff. pl.* 51. 28 *Aff. pl.* 50. 42 *E. 26. 4 Co. 8. b. 2 Inst.* 107.

So if one distrain four horses and a cart for 2s. rent, this is not excessive, because of the entirety, they being all fixed to the cart. 8 *H. 4. 15. 20 E. 4. 3. 2 Vent.* 183. 2 *Inst.* 107.

And so it is said of a fold or flock of sheep, i. e. where they are entire, and cannot well be separated. 20 *E. 4. 3.*

But if 40 several sheep are taken for 2d. or 16 oxen for 9d. this is excessive, because they are several. 41 *E. 3. 26.*

So if two oxen are taken for four pair of gloves, or 20 sheep are taken, ten for one pair, and ten for another, this is excessive. 29 *E. 3. 24. adjudged.*

If the lord distrains a horse or an ox for 1d. if no other distress were on the land, it is not excessive; but if sheep, or swine &c. were there at the time of taking, it is an excessive distress, because he might have taken a beast of less value. 2 *Inst.* 267.

Note: By the statute of *Marlbridge*, made 52 *H. 3. cap.* 4. distresses must be reasonable, and not too great. And by the statute *de districtione scaccarii*, made 51 *H. 3.* if the lord takes an unreasonable distress, an action lies on that statute against him.

But an indictment or information will not lie against him for taking such unreasonable distress, because only a private offence. See the

the case of *The King v. Ledgingham*, 1 *Mod.* 71. 288. 1 *Lev.* 229. *Raym.* 205. 1 *Vent.* 104.

If the lord distrains for rent or services, he need not give notice to the tenant for what he distrains; for the tenant by intendment of law knows what is in arrear for his land. 45 *E.* 3. 9.

And so it is where the lord distrains for an amercement in a leet. *Ibid.*

For notice is not necessary, where the matter is presumed to be known without it. 1 *Salk.* 457.

The bailiff that distrains ought to give notice in whose right it is. See *Bro. Distress* 78.

But though a man distrains for one thing, yet when he comes into a court of record, he may avow for another. *Bro. Distress* 62.

What and how notice shall be given before the distress sold, vide the statute 2 *W. & M.*

If the lord or another distrained several times for rent or services where none in arrear, the tenant may by the common law have an *assise de souvenit distress*. *F. N. B.* 178. But if he distrained for homage or fealty so often that the tenant could not manure his land, yet the tenant could not have that action. 4 *Co.* 8. b.

This action lay at common law, in which the writ was general, and the count special, and the judgment therein was not that the defendant should recover seisin for that he had before, but that he should hold the lands *absque multiplici districtione*. 8 *Co.* 50 a. b.

And it has been commonly held, that two distresses cannot be taken for one and the same cause; and so is the case of *Wallis and Savil* in *Lutw.* 1535 *Esc.* in *trespass*, the declaration was for taking his cattle *Esc.* such a day, and other cattle the same day; and a plea in *bar* by demise of part of a rectory reserving rent, and that 20 *l.* was in arrear *Esc.* and so justifies the first taking of 15 *l.* and the latter for the residue; and on demurrer thereto, judgment was for the plaintiff.

Because the second distress was not lawful, for one cannot have two distresses for one and the same rent, and it was his folly he did not take a sufficient distress at first. *Vide Cro. El.* 13. *Mo.* 7.

And the reporter queries, whether the second distress in that case had been justifiable, though it had been pleaded, that at the time of taking the first distress there was not a sufficient distress on the land demised, and that the first distress was but of such a value *Esc.*

But, in our opinion, that, and some other late judgments, are ill founded, especially since the statute 17 *Car.* 2. *cap.* 7. which enacts, "That where the cattle distrained, are not of the full value of the arrears of rent *Esc.* for which they are distrained, the party, his executors, and administrators, may distrain again."

And it is admitted in the case of *Vasper and Eddows*, *Salk.* 248. That where a distress dies, the distrainer may distrain again. See 3 *Cro.* 162. 2 *Lev.* 174. *Cro. Car.* 148. 2 *Inst.* 107. 13 *H.* 4. 17. *Raym.* 720.

*Per Holt*, Chief Justice, If a distress dies the in pound, the action is revived, for the distress failed by the act of GOD. Otherwise where it



it escapes, unless it be made appear the plaintiff was in no default. *Salk.* 248.

*Quære*, On a distress rescued, whether the distrainer may distrain again.

If a distress be made of goods or cattle without cause, the owner may rescue them before they are impounded. *Vide Co. Lit.* 47. *b.* *Salk.* 247. *Lord Raym.* 104.

But if a distress taken without cause be impounded, the owner cannot break the pound, and take them out, because they are in custody of the law. *Ibid.* 1 *And.* 31.

Yet if one takes cattle as damage feasant without cause, and puts them in a pound, and the owner makes fresh suit, and finds the door unlocked, he may justify the taking out the cattle *in parco fracto*. *Co. Lit.* 47. *b.* *F. N. B.* 100. *Winch* 80, 8. *Salk.* 247.

But where one distrains my cattle without cause, yet a stranger of his own head cannot rescue them from him. 39 *E.* 3. 35. *b.* *F. N. B.* 102. *E.*

Yet if one distrains my cattle, together with the cattle of *J. S.* without cause, either *J. S.* or I may justify the rescue of all the cattle. 39 *E.* 3. 35. *per Thorp.* *Vide* 1 *Roll. Ab.* 673. 2.

A commoner may distrain a stranger's cattle, and avow shewing a damage to himself, or have an action on the case; if he can alledge any damage to himself, as that he could not have his common *in so ample a manner as he ought*. 3 *Lev.* 104.

If a commoner puts his sheep into a common, and they, together with the sheep of *B.* who has no right of common there, are distrained damage-feasant, and in one flock chased towards the pound, he may stop them all, and drive them to a convenient place to sever his sheep from the rest. *Cro. Jac.* 568. 1 *Roll. Rep.* 163. and it is said he might drive all back into the common again till severed. But note; the pleading therein was held ill; and therefore judgement against him.

If one coming to distrain damage-feasant, sees the beasts in his soil, but the owner, on purpose to prevent it, chases them out before they are taken, the owner of the soil cannot distrain, or if he do, the owner of the beasts may rescue them; for the beasts ought to be damage-feasant at the time of the distress. *Co. Lit.* 161.

Where a distress taken in the King's highway for services &c. may be rescued, *vide Cro. El.* 710. and stat. *Marlb. cap.* 15. 2 *Inst.* 131. 1 *And.* 71, 72.

And where cattle must be levant and couchant before they can be distrained for rent. *Vide Lutw.* 1577 to 1581.

And note; by the statute 2 *W. & M. sess.* 1. c. 5. upon any poundbreach or rescue of goods or cattle distrained for rent, the party grieved in a special action on the case shall recover his treble damages and costs.

See 5 *Mod.* 362. and *Salk.* 248. An anchor, sails and cable of a ship distrained for toll or port-duties, *ibid.* 250. That goods delivered to a tradesman to be manufactured, are not distrainable for rent; *ibid.* 249. That goods delivered to a common carrier that carries them for

for hire, are privileged from a distress whilst in his custody. And so it means of goods in possession of a stage-coach driver, if the master takes a hire for their carriage. See *Salk.* 282. 249, 250.

But note, in *5 Mod.* 362. it is said, and not denied, that tho' many things are privileged from a distress, as a horse on which one rides, a carrier's horse and goods, a horse at a smith's shop, cloaths at a tailor's shop &c. because not fit that the rent of a stranger should be paid with such things: Yet this must be understood where there are not goods sufficient besides to be distrained, *2 Stra.* 717. *2 Lord Raym.* 1424.

*How distresses are to be disposed of.*

**T**HE person who distrains any things that have life (as cattle &c.) ought to put them in a pound overt, that so the owner may resort to feed them; for in that case the owner is to keep them at his peril. *Co. Lit.* 47. b. *2 Inst.* 106.

Yet the distrainer may put them in a pound covert or close; but then he shall keep them at his peril, tho' he shall not have any satisfaction for his trouble or charge. *Ibid.*

A pound overt is a pinfold made with timber or stones &c. for such purposes; or the close of him that distrains of a stranger with his consent. A pound covert or close, is when goods &c. are impounded in a house &c. *Vide Co. Lit.* 47.

By the common law a man who distrained was bound to remove his distress, if the tenant's interest continued, or else the lord became a trespasser by his detaining possession of part of the demised premises. But the statute which made corn in sheaf &c. distrainable, enacted, 'That it might be secured upon the land.'

And now by *11 Geo. 2. c. 19.* Persons taking distress for rent, may impound and secure the distress in such place or part of the premises as shall be most fit; and egress and regress to view, appraise, buy, carry off &c. are given by this act, with like remedy for pound breach and rescous, as in other cases by former statutes.

And if a man distrains dead goods, as utensils of a house, or such like, which may take damage by wet or weather &c. he ought to impound them in a house, or other pound covert or close: for if he impounds them in a pound overt he shall answer for them. *Co. Lit.* 47. b.

Note; A person who wishes to take advantage of the statute of *Marl. or 1 & 2 P. & M. cap. 12.* must do it by way of action on the statute, so as to entitle the King to a fine; and cannot do it by way of a *trespass on the case*, or a *plea in bar* &c. and driving into a city or vill that is a county of itself, though within the same county, is a driving out of the county. *Vide 3 Lev.* 48. *2 Inst.* 131. 191.

And if the distress be impounded in several liberties, it is an offence within the words, *several places*, of the act *1 & 2 P. & M. Vide Dyer* 177. b. But where three persons distrain a flock of sheep, and severally

rally impound them in three several pounds, yet they shall forfeit but one five pounds, and one treble damages; as adjudged in *Mo. 453.* and *Noy 52.*

In *Noy 62.* it is said, That if the action be brought against them severally, each of them shall pay five pounds. But *quare.*

And whether the distress be of live things or dead, they cannot be impounded in any pound either overt or covert, above three miles from the place of taking, and that within the same county. *Co. Lit. 47.*

If a man takes a horse for a distress, and puts it in pound overt, and the horse leaps three times, over the pound, which is of the common height, for which reason he ties him with a halter to a post in the pound, whereby he strangles himself, yet this will not excuse the distrainer, but an action of trespass lies against him. *Raym. 720.*

If a cow is taken for a distress, the distrainer cannot milk her; for though she be the better for it, yet he ought not to do good to the owner without this consent; and if the cow perishes thro' not milking &c. yet the distrainer may distrain again, and thus is at no damage thereby. 1 *Roll. Abr. 673, 879. Cro. Car. 148. &c.*

A person distrained a hog damage-feasant, and put it in a common pound, from whence it escaped, and then brings *trespass* against the owner for the damage done. *Holt Ch Just. &c.* held it did not lie; for it was the plaintiff's fault to put the hog in a pound which could not hold him: also it is the distrainer's pound (*vide F. N. B. 100*) who might have put him in any other place, even in a pound covert. If a distress dies in the pound, the action revives; for the distress failed by the Act of GOD; but it is otherwise where it escapes, unless it can be made appear the plaintiff was in no default; for his default ought not to intitle him to another action, nor subject the defendant to a double punishment for the same cause, *viz.* Loss of his hog, and this action. *Salk. Rep. 248.*

If there exists a custom in a town, That if a butcher kills any beast there, and sells the flesh in the market, he shall pay two-pence for every hide, and that the bailiffs may distrain the hide, if denied: provided the custom be good, and that a hide so distrained is well taken, yet the bailiffs cannot tan the hide to prevent its rotting; for the custom to distrain the hide does not enable them to tan it, the property being *quasi* altered thereby, the marks by which it may be known again being taken away, so that the owner cannot have it again, or replevy it in kind. 2 *Roll. Abr. 562.*

It is indeed there said by *Popham*, That in some cases a man may meddle with and use a distress, where it is for the benefit of the owner; as if a person distrains armour, he may cause it to be scoured to avoid rust; or if raw cloth, he may cause it to be fulled &c. but this seems not law, as is evident from the case of the cow milked, above cited And in *Vent. 37.* is a case cited, where one distrained a trunk for rent, and being informed there were things of value in it, he



he caused it to be corded to prevent damages; but for this care &c. he was adjudged a trespasser *ab initio*.

If turfs lie in a common damage-feasant, a commoner may distrain them, but he cannot burn them. *T. Jones* 139.

A man cannot work a distress, because he has no property therein, nor possession *in right*, but only a bare power by act of law to take it as a pledge or security &c. *Dyer* 280.

So if a person has the distress on a return irrepleviseable, he cannot work it, because the judgment is to remit it to the pound, there to remain &c. *Owen* 124.

But cattle taken upon a *withernam* may be worked and used; as if they be cows they may be milked, or if oxen or horses, be reasonably worked, because in that case they are delivered in lieu of the party's own cattle. *1 Leon.* 90. *3 Leon.* 235, 236.

Where a distress cannot be removed, it must be secured in the land or place where taken, statute *2 W. & M. cap. 5*.

If a Lord takes a distress for an amercement in a leet, he may impound or sell it at his pleasure. *8 Co.* 41.

A distress in a court-leet may be sold. *Stat. 3 H.* 7. 4.

A distress taken for a fine, for not repairing highways, may be sold. *Stat. 18 Eliz. cap. 10*.

Where a statute says, that a penalty shall be levied by distress, a power to sell is also given without further words. *6 Mod.* 83.

But though the words in acts of parliament (*to be levied by distress*) imply a sale, and give the officer distraining a power to sell, yet if such officer sells on credit, when he might for ready money, he is immediately chargeable to the party for whom the distress was taken. *Ibid.*

A distress and sale for breach of a by-law is ill, for a corporation can only distrain for breach of a by-law, except there be also a custom to sell. *Co. Lit.* 145.

A distress is taken only as a pledge or security for another thing due; and by the common law, the taking did not alter the property, and therefore the party could not sell it; and such statutes as have enabled the distrainer to sell &c. do not extend to a distress taken for the breach of a by-law.

*Precedents and directions for making and conducting a distress from the seizure to the sale.*

*The form of a warrant to distrain.*

**K** NOW all men by these present, That I G. H. of London, Gent. do hereby authorize and appoint L. of &c. to take any person or persons to his assistance, and enter into the house of G. H. in &c. and there make a distress of all such goods and chattels as are in and upon the premises, or any part thereof, for twenty pounds, for one half year's rent due to me the said G. H. at Lady-day last. And

after the said goods are so distrained, if the T. doth not within the time limited by the act of parliament for that purpose made, pay the said rent, or replevy the said goods, then and in such case I do hereby authorize you the said L. to cause the said goods to be appraised, and according to such appraisement to make sale thereof to any person or persons as will buy the same; and to dispose of the money arising by the sale, in such manner as by the said statute is directed: and for your so doing this shall be your sufficient warrant. Witness my hand and seal this thirteenth day of April 1765. G. H.

Witness,

A. B.

C. D.

*Note;* The above warrant must be engrossed on a treble sixpenny sheet of stamped paper, or you may make a warrant in the following form on paper without a stamp:

To Mr. F. F. my bailiff, greeting,

Distrain the goods and chattels of A. B. in the house he now dwells in, situate &c. for ——— pounds, being for one year's rent, (or as the case may be) due to me for the same, at Michaelmas-day last past; and for your so doing, this shall be your sufficient warrant. Dated &c. J. K.

When you enter the house of the tenant whose goods you are to seize, it will be proper to take hold of a chair, or any other of the goods of the said tenant, and say, You distrain this and the rest of the goods in this house for so much rent due to Mr. G. H. at Lady-day last; and then proceed to take an inventory of the goods as follows:

*An inventory of the goods distrained &c.*

In the parlour.

L. s. d.

Six leather-bottom chairs, walnut-tree frames.

One mahogany dinning-table.

One large pier looking-glass and two sconces in lacquered frames.

A stove-grate, steel-fender &c.

In the dinning-room.

Six chairs &c.

The inventory may be taken by the person who distrains the goods; nor is an appraiser necessary till after the end of the five days allowed the tenant to pay the rent, or replevy the goods, by stat. 2 W. & M. sect. 1. cap. 5.

After the inventory is taken, you must write at the bottom of the same a notice to the tenant, to acquaint him of such distress being made,

made, and the time when the rent and charges of distress must be paid, or the goods replevied.

If the goods are secured in the house, the following notice must be given *verbatim*; if not, so much as relates to the securing the goods must be omitted; if secured from off the premises, the tenant in his notice must be informed of the place where.

*Notice of distress to be wrote at the bottom of the inventory.*

Mr. C. T.

**T**AKE NOTICE, That I have this day seized and distrained the goods and chattels in the above inventory particularly mentioned, (by virtue of an authority for that purpose from Mr. G. H. your landlord) for one half year's rent due and in arrear to me (or to the said T. B.) on *Lady-day* last, for a house &c. in ——— and have secured the said goods and chattels in the dining-room one pair of stairs in the said house; and that unless you pay the said rent and charges of distress, or replevy the said goods and chattels within five days from the date hereof, they will be sold according to law. Dated the ——— day of ——— 1765.

Yours &c.

The landlord or bailiff's name, as the case may be.

*Memorandum of delivering a true copy of the inventory to the tenant.*

**A** True copy of the above inventory and notice was this ——— day of ——— 1773, delivered to the above mentioned C. T. in the presence of us

E. F.  
G. H.

#### *Directions.*

A true copy of this inventory and notice must be left with the tenant, or some of his servants, if there is any person in the house, or fastened on the door, or put into the key-hole, or left in some *notorious* part of the house, if nobody is therein. It is proper to have a person with you when you make a distress, to examine the inventory, and to be a witness to the transaction, if called on for that purpose.

The safest way is to remove the goods immediately, and in your notice to acquaint the tenant where they are removed; but it is now most usual to let them stay on the premises, and leave a man in possession to protect them till you are entitled to sell them by law, which is on the seventh day, because the statute says, You are to give five days notice, and it is held and understood to be five whole days, which must be exclusive of the day the distress was made.



If the tenant wants further time to raise the money, and the landlord chuses to give him such indulgence, he must take a memorandum from tenant, that possession is continued at his request, and by his desire, or landlord would be a *trespasser* in continuing same beyond the time limited by the statute, and liable to an action for so doing.

On the seventh day, you should search the sheriff's office to see if the goods are replevied; if not, go to the premises, and if tenant is there, or any body on his behalf, demand the rent and charges of distress; if he does not pay the same, send for a constable and two sworn appraisers; let them see the goods taken in distress, and then the appraisers must be sworn by the constable, by laying both their hands upon a Bible having the New Testament in it. The common way is for the appraisers to buy the goods at their own valuation, and a receipt at the bottom of the inventory, witnessed by the constable, is considered as a sufficient discharge; but if the goods taken in distress are of great value, let there be a proper bargain and sale between the landlord, the constable, the appraisers, and the purchaser, for the better proving the transaction afterwards, if there should be occasion. The constable must administer to the appraisers the following oath:

*The appraiser's oath.*

You and either of you shall make a true appraisement of the goods now shewn to you, and mentioned and contained in this inventory, (*the constable having at the same time the inventory in his hand, and shewing it to them*) according to the best of your judgment.

So help you God.

*A minute of the appraisers being sworn,*

MEMORANDUM, That on the ——— of ——— 1772, E. F. of &c. and I. G. of &c. two sworn appraisers, were sworn upon the Holy Evangelists by me L. M. of &c. constable, to make a true appraisement of the goods mentioned in this inventory, according to the best of their judgment. Witness my hand,

L. M. constable.

PRESENT at the time of swearing, the said E. F. and I. G. as above, and witnesses thereto O. P.

K. I.

After the appraisers are sworn, and have viewed and valued the goods, indorse the following memorandum on the inventory for the appraisers to sign.

*Memorandum*

*Memorandum to be indorsed on the inventory.*

We the above named *E. F.* and *I. G.* being sworn upon the Holy Evangelists, by *L. M.* the constable above named, to make a true appraisement of the goods mentioned in the above inventory, according to the best of our judgment, and having viewed the said goods, DO adjudge and value the same at the sum of ——— pounds, and no more. As witness our hands, this ——— day of ——— 1772

*E. F.*

*I. G.*

After the goods are sold for the best price you can get for the same, you must deduct the arrears of rent and all reasonable charges, and the overplus (if any) must be paid or applied to the tenant's use.

*Notice where the tenant requires a further time for payment of the rent &c.*

*Mr. C. D.*

I hereby desire you will keep possession of my goods which you have this day distrained for rent due from me to you in the place where they now are, being in (*premises where distress made, describing same*) and I will pay the man for keeping the said possession. As witness my hand this fourth day of ——— 1772.

*A. B.*

If the sheriff is in possession of the goods of a tenant on an execution, the landlord need not make a distress, but should forthwith serve him with the following notice :

*Notice to the sheriff.*

To *John Wilkes, Esq;*

and

*Frederick Bull Esq;*

} *Sheriffs of Middlesex.*

Take notice, that there is now due from *A. B.* the person to whom the goods belong, you are now in possession of, by virtue of his Majesty's writ of *fiari fac. &c.* returnable (*the return*) the sum of ——— pounds, for one year's rent due to me at *Lady-day* last. As witness my hand, this ——— day of ——— 1772.

*C. D.*

*Landlord of the said premises.*

*Note,* The man in possession of the goods &c. is to be paid two shillings and sixpence *per* day, if the tenant keeps him; three shillings and sixpence, if he keeps himself.

*Cofes*

*Cases of practice relating to distress.*

**T**H E books of a scholar, an anvil in a smith's shop, and a mill stone that is severed for picking &c. fish in a pond, and poultry, tools of trade, cattle of the plough, if sufficient distress without, a garment or cloth in a taylor or weaver's shop, sacks of corn or meal in a mill or market, corn growing, or ground, a horse in a smith's shop or inn, are not distrainable; nor is any thing on which replevin will not lie, the doctrine of distress being, that all things repleviable are liable to distress.

If goods are taken in execution, the landlord is entitled to a year's rent, and no more. *Stat. 8 Ann.*

The executor or administrator of a landlord hath the same right under the equity of the 8 *Ann.* it being an interest vested. *Forcesc. Rep. 360. Strange 214.*

The ground landlord is not within the meaning of the stat. 8 *Ann.* 2 *Strange 787.*

Where land is let for a year, and afterwards at will, for less rent than before, and both rents made payable half yearly; if at the end of the first half year, under the last demise an execution comes, the landlord is entitled only to the last two half year's rent. *Andr. 218.*

If land let for a year, and then part thereof at will, if execution comes, the landlord is not entitled to any part of the first year's rent. *Andr. 219.*

There is a proviso in stat. 8 *Ann.* that same does not extend to the King; so that landlords on extents, outlawries &c. are excluded from their rent, when on execution at the suit of the King. *MS. Cases, C. B.*

Living things distrained must be put in a pound overt, that the tenant may feed them: the landlord may put them into a pound covert, but then he must keep them at his peril, without being able to recover such expences from the tenant. 1 *Inst. 47. b. 2 Inst. 106.*

Goods that may receive damage from the weather, must be put where they will be secure therefrom; if damaged, the landlord is answerable. *Ibid.*

A distress of cattle or goods is not to be taken or driven out of the county where the distress made, nor above three miles from the place where taken. Goods distrained at one time, shall not be impounded in several places, so that the owner be forced to sue several replevins, under forfeiture of 5*l.* to the party aggrieved, and treble damages, the pound keeper not to take for poundage above 4*d.* under forfeiture of 5*l.* and the money above the 4*d.* *Stat. Marl. & Westm. 1. 1 & 2 P. & M.*

A cow distrained cannot be milked by the distrainor; if she perish for want thereof, he may distain again. 2 *Leon. 174.*

The distrainor cannot work a distress of live cattle, because he hath no property therein, nor possession *in jure*, the law gives it him only as a pledge or security. *Dyer 280.*



A landlord may enter the house of his tenant to distrain, if the door be open; but if barred, he must not break it open to make his distress. Stat. 38 Hen. 6. Fitz. Distress 21.

A landlord making an excessive distress, is to be grievously amerced. Stat. 52 Hen. 3. 1 Vent. 104.

A horse bringing goods to market, goods brought to market to be sold, goods on a wharf or warehouse for exportation, goods in the hands of a factor, goods delivered to a carrier to be carried for hire, and wool in a neighbour's barn, are goods of a third person, which cannot be distrained by a landlord for rent, though found on his premises. Bur. vol. 3. p. 1489.

Goods left at an inn, or other place, a chariot standing in a coach-house belonging to a common livery stable, being parcel of, and rented with said livery stable, may be distrained by the landlord for rent in arrear, though the property of a third person; so may goods or household furniture of a lodger or inmate. Bur. vol. 3. p. 1500.

An action of *trespass* brought for a distress made under stat. 2 W. & M. held good. 4 Mod. Rep. p. 231.

Notice of the goods of a stranger taken for rent *levant or couchant*, must be given either to the owner of the goods, or the tenant of the lands so distrained on. 4 Mod. Rep. p. 394, 395.

The tackle of a ship is not distrainable of *common right* for toll; but by *custom* it may; the law making a difference between the distress which is allowed for rent and that for a toll. 5 Mod. Rep. p. 362.

On a distress for rent, where part of the rent distrained for is due, and part not, on a *rescue* made of such distress, the distrainer can never recover damages for that part which is not due, though *rescued*. Ibid. p. 366.

A distress may be made on a tenant of part of a house before quarter-day, by virtue of a general warrant for a *parish rate*. 6 Mod. Rep. p. 214.

If the tenant removes from that *parish* to another in the same county, he may be distrained on for such rate by a warrant from the justices. Ibid.

If he removes out of the county, there the remedy against him for such rate fails. Ibid.

If a landlord seizes part of his tenants goods for rent in arrear in the name of the whole goods on the premises, this is deemed a seizure of the whole. 6 Mod. Rep. p. 215.

By stat. 2 W. & M. cap. 5. if a landlord or his bailiff seizes goods, they must be immediately removed, except it be of *hay* or *corn*. Ibid.

Distresses on *penal statutes* must be levied by warrant of a justice of peace. Ibid. 83.

If a second distress is made on a person for the same rent, his remedy is by *recaption*. 7 Mod. Rep. vol. 7. p. 18.

On a distress of live stock, if the same escapes, the owner can have no remedy against the distrainer by action of damages. 11 Mod. Rep. p. 21 & 24.

No distress can be made for rent after the distrainer's term is at an end. Ibid. 204.

A distress taken in two different districts may be sold in either, after giving the party notice, being an entire distress, which cannot be severed. 12 *Mod. Rep.* p. 76.

A distress taken in two counties may be appraised by the authority of the officer in one county. 1 *Raym.* p. 55.

A distress taken in two places, for one cause, ought to be impounded together. *Ibid.*

Personal notice of a distress answers the intent of the statute. *Ibid.*

Notice to the owner of goods taken on a distress, is sufficient.

1 *Raym.* p. 54.

The goods belonging to a ship may be distrained, for the port-duties of goods shipped on board such ship. *Ibid.* 216.

If a distress for *damage feasant* die in the pound, or *escape*, they cannot be retaken; but if for rent, the party may distrain again. *Ibid.* 397.

A reasonable distress may be made to enforce an appearance in an inferior court. *Ibid.* 610.

If such goods are *rescued*, the steward of the inferior court may set a fine on the party. *Ibid.*

The officer in levying such fine must not break open a door. *Ibid.*

If on a distress of live cattle, the same *escape* out of the pound, the party cannot bring an action of trespass for such *escape*, unless it appears it was without default. *Ibid.* 658.

If cattle, after they are distrained, are put into a pound *overt*, and die, there the party distraining may bring his action for the rent, or may distrain again. *Ibid.* 662.

If they are stolen thereout, he has the same elective remedy to recover his rent. *Ibid.*

While goods, cattle, or any other thing, are distrained, it is a bar against bringing any action of trespass. *Ibid.* 663.

On a distress of live stock, the distrainer is not obliged to keep them in a common pound, but in a pound *overt*. *Ibid.* 664.

The pound where the cattle are put, is deemed in Law the pound belonging to the distrainer, though on another man's soil; and if broken open, and any injury arises to the distrainer, an action lies against the party. *Ibid.*

If cattle taken on a distress are put into a pound *overt*, and such cattle *escape* thereout, without the distrainer being the cause thereof, the distrainer may have his action of *trespass*. *Ibid.* 665.

A person may distrain corn in sheaves for the arrears of an annuity. *Fortescue* 361.

Where lands lie in two counties not contiguous, and are demised together, a distress for rent of the same made on live stock in one county cannot be driven into another. 1 *Raym.* p. 55.

If things taken on a distress, are sold at the appraised price, the law will intend that they are sold at the best price. *Ibid.*

An illegal distress may be *rescued* before it is impounded, but not afterwards. *Ibid.* 105.

Cattle that *escape* into a tenant's land, without the default of the owner of such cattle are not distrainable for his rent, till they are *levant* and *couchant* on such land. *Ibid.* 169.

By stat. 32 Hen. 3. cap. 37. an executor of a tenant for life of a rent charge, may distrain for the arrears of such rent charge. *Ibid.* p. 173.

Cattle distrained for rent in arrear must be returned on payment of such arrears, though such cattle have been returned irrepleviable. *Ibid.* 643.

If the party distrained on makes a tender of the damages, the goods distrained on ought to be discharged. *Ibid.* 719.

The writ of *Withernam* ought to be staid on tender of the damages assessed. *Ibid.* 720.

The party distrained on may bring an action of *detinue*, if after a tender of the arrears the distress is detained, though after a return of such distress irrepleviable. *Ibid.*

Cattle distrained for rent must not be tied up in the pound. *Ibid.*

No action lies after a distress made for the same distress, unless the distress dies, or escapes, through the defendant's default. *Ibid.*

The landlord, after having made a distress, must remove the goods at the end of the five days after by the statute, or he is a trespasser, and an action of trespass will lie against him. *Strange, vol. 2. p. 717.*

An action of trespass does not lie for making an excessive distress, where the entry made for making such distress was lawful; but otherwise if it was not. *Ibid.* p. 857.

Where there are two parcels of land distinctly let, the landlord cannot make a joint distress for both rents. *Ibid.* p. 1040.

If a landlord making a distress of cattle, impounds them in another county, this act will not make him a trespasser, so as to ground an action of trespass against him. *Ibid.* p. 1272.

A landlord has no remedy against the sheriff for the rent in arrear, where the sheriff comes in under an execution, if he does not make his demand for such arrears before the removal of the goods so taken in execution. *Strange vol. 1. p. 97.*

Nor can the administrator of a landlord within stat. 8 Ann. cap. 14. *Ibid.* p. 212.

When an execution comes into a house where there is a year's rent, or under, due, the same must be paid by the sheriff to the landlord of such premises, without any deduction whatsoever. *Ibid.* vol. 2. p. 763.

The ground landlord cannot come in for his rent in arrear, on an execution against the goods of the under lessee of such premises. *Ibid.* p. 787.

Where there are two executions against a tenant's goods, and there are two years rent due to the landlord, he cannot have the two year's rent under such executions. *Ibid.* p. 1024.

If the outward door of a house is open, the landlord or his bailiff may justify the breaking open the inner door to make a distress for rent. *Cases Temp. Lord Hardwicke, p. 168.*



*Foreign fowls* are distrainable under stat. 43 *Eliz.* for poors rates, although there be other goods on the premises more than sufficient to answer the rent in arrear. *Bur. vol. 1. p. 587, 588.*

A distress for an entire duty shall not be split, nor shall a distress be taken for part thereof at one time, and for another part thereof at another time, because it would be oppressive, which the law will not countenance. *Ibid. p. 589.*

If a seizure be made at first for the whole arrears &c. and the distrainor has only mistaken the value of the goods, he may complete such seizure by a second distress, provided the same be for the same sum due and in arrear. *Ibid. p. 590.*

On an *excessive* distress a general action of trespass cannot be maintained for such excessive taking, the party's remedy must be by a *special* action, grounded on the statute of *Marlbridge*. *Ibid. p. 590.*

## R E P L E V I N S,

### *The nature of them.*

**A**R E of two sorts, viz. by *writ* and by *plaint*. The writ is given by the *common law*, and is an *original* issuing out of the *Chancery*. It is *vicontiel*, and in the nature of a *justice's*, empowering the sheriff to do justice to the parties applying for the same.

Though this writ is not returnable, yet the proceedings had thereon may be removed into the *K. B.* or *C. B.* by writ of *pone*, brought either by the plaintiff or defendant. If the defendant brings a writ of *pone*, he must assign his cause of removal at the end of the writ. If brought by the plaintiff, he may remove the suit without any cause shewn.

If the party proceeds by *plaint*, which is a remedy given the subject by the statute of *Marlbridge*, 52 *Hen. 3. cap. 21.* whereby it was enacted, "That if any beasts be taken, and wrongfully kept, the sheriff, on complaint to him made thereof, may deliver them without *let* or *gainsaying* of him that took them, if they were taken out of a liberty; but if taken within any liberty, and the bailiffs of such liberty will not deliver them, then the *sheriff*, on such bailiff's default, shall deliver them."

By this *statute* the *sheriff* may, on a *plaint* made to him without a writ either by *parol* or by *precept*, command his bailiff to *deliver*, that is, make a *replevin* of the things taken, and may take a *plaint* out of the *county court*, and may make a *replevin* immediately thereon.

### *The design of the writ of replevin.*

It is brought to have goods, cattle, or other things which have been distrained, either for rent or any other cause, returned to the party on security given by him to the sheriff, to prosecute the writ with effect, and return the goods &c. again, if such distress shall be adjudged lawful. If the party does not pursue his writ, or if the distress

distress be found lawful, then the defendant, who, in this suit, is called the *avowant*, and avows or justifies the taking of the goods &c. shall have the distress returned to him again on bringing his writ, *de retorno habendo* for that purpose.

If the goods &c. distrained on are not taken by the *sheriff* on the first writ of *replevin*, the plaintiff may have an *alias* and *pluries*, neither of the two first are returnable on a day certain, though the *pluries* is.

In an action of *replevin*, if process continues to a *pluries*, and the *sheriff* returns thereon, in *C. B.* that the defendant claims property, tho' no day is expressly given by the writ to the parties, but to the *sheriff* only, to excuse his contempt for not serving the process before. On the return of the writ, the parties may appear and plead; viz. the plaintiff may declare, and the defendant may plead to it, and such procedure will not be deemed erroneous, for there is no other writ issues after this. If the *pluries* be returned in three weeks of *St. Michael*, and nothing is done in the matter till *Easter* term following, the parties may then appear and plead, if they think proper.

On the *pluries*, if the *sheriff* returns, that the things &c. are eloiigned in places to him unknown, so that he could not deliver them to the plaintiff. On this return made by the *sheriff*, the plaintiff may have a *capias* in *Withernam*, which writ is a mandatory order to the *sheriff* to take the cattle or goods of the defendant, and detain them till the cattle or goods distrained on, are restored to the plaintiff. If the *sheriff* returns a *nihil* on the first *Withernam*, then an *alias* and *pluries* may issue, if these writs are returned *nihil* by the *sheriff*, then an *exigent* may issue.

On the return of the *exigent*, the defendant may come in and *gage deliverance*, that is, find pledges to deliver the cattle, goods &c. taken in distress, if found against him. If the plaintiff declares on an *uncore detent*. and proceeds to trial on the right of distraining, if a verdict be found for the plaintiff, he shall recover his costs and damages; if on the contrary, a verdict is found for the defendant, he shall be entitled to a writ of *retorno habendo*.

If on the premises aforesaid the defendant appears, then no writ of *Withernam* will lie, but he must *gage deliverance*, or be committed. If the plaintiff shall count on an *uncore detent*. and a verdict is found for him, that the cattle, goods &c. are not delivered, he shall recover the value, and costs and damages; and if found for the defendant, he shall have his costs and damages, and a writ of *retorno habendo*.

Tho' the writ in *replevin* may be general, yet the count or declaration thereon must be certain and particular, and state to the court the numbers, kinds, and qualities of the cattle, or other things distrained on, that the *sheriff* may be enabled to make a deliverance of the same.

In a declaration for taking cattle, the plaintiff must set forth the particular place where such cattle were taken, or the declaration will be deemed naught for uncertainty.

The *sheriff* is to deliver according to the writ directed to him, wherein the species, kinds, or qualities of the thing to be delivered are particularly expressed. If he delivers one thing for another, or

does not comply with the letter of the writ, an action on the *case* may be brought against him for such default.

It is held, that if a count or declaration in replevin be certain to a general intent, there needs no particular description of the cattle, goods, or other thing distrained on, for that it lies on the defendant in his *avowry* to shew the cattle, goods, or other thing taken, with particular certainty, the *avowry* being in the nature of a declaration.

If the *count* or the *avowry*, or if both, be uncertain in describing the kinds and qualities of the cattle, goods, or other thing taken, the sheriff may, on a writ of *retorno habendo*, enquire into those matters, and return the same accordingly.

A suitor may have the writ of *retorno habendo* in every case, where it appear the defendant was in possession of the cattle, goods, or other thing, if the same are delivered on the *replevin*.

If on the *retorno habendo* the defendant cannot have the cattle, goods, or other thing distrained on returned to him again; as for example, where the sheriff returns on this writ that they are dead &c. the defendant may then take out a *sci. fa.* against the pledges given by the plaintiff, and if on this *sci. fac.* the sheriff returns a *nihil*, the defendant may have a *sci. fac.* against the sheriff himself, for his default in not taking pledges, or in not taking sufficient pledges, for those in *law* are deemed no pledges at all.

If on the *retorno habendo* issuing, the sheriff returns a *fugavit* into another county, or that he cannot have the view or that the cattle &c. are *eloigned* to places unknown to him, or that the bailiff of the liberty (if in a liberty) has returned either an *elongata*, or that the cattle &c. are impounded in some particular place, then he may have a writ of *Withernam*, and after three *capias*'s returned *nihil an exigent*.

On the writ of *retorno habendo* for cattle &c. the sheriff must either return a *deliberari feci*, or something in excuse, as an *elongata*, or that no person came to shew him the cattle, goods &c.

On an *elongata* returned by the sheriff on the writ of *retorno habendo* does not conclude the defendant from afterwards pleading *non cepit* to the action, because such return was necessary, and the sheriff could not avoid making the same, and for that reason no action lies against the sheriff for a false return of an *elongata*, where he is not able to make a deliverance agreeable to the command of the writ of *retorno habendo*.

After an *elongata* returned to the writ of *retorno habendo*, and a writ of *Withernam* issued, if the defendant pleads *non cepit* to the action, he shall have his cattle, goods, or other thing taken in distress returned to him again, and so he shall where he claims property; for where either the taking or the not taking is in question, it is but reasonable he should have his cattle, goods, or other thing returned to him pending the suit.

The party who brings the suit, and who is called the plaintiff in *replevin*, must have a real property in the cattle, goods, or other thing taken in distress at the time they were so taken, or he cannot maintain his suit.



If the defendant pleads that such property is in a stranger, and the same shall be so found by the jury, he shall have a return of such cattle, goods, or other thing taken in distress, without any suggestion in nature of an *avowry*; and if it appears by the verdict given, that the plaintiff had no property in the cattle, goods, or other thing taken in distress, judgment shall be given against him.

If a writ of *second deliverance* issues, it is a *superseas* to the writ of *retorno habendo*, but not as to the inquiry of damages, which may be sustained by the taking such cattle &c.

By *stat. 1 & 2 W. and M. cap. 12. it is enacted*, That the sheriff shall, at the first county court, or within two months after he receives his patent, depute, and proclaim in the *shire town*, four deputies, not dwelling above twelve miles from one another, who are to make *replevins*, and deliverance of distress, in such manner as the sheriff himself ought to do, and the sheriff may hold plea thereof, and determine the same in the county court.

If cattle, goods, or other things, for rent, or *damage feasant*, or for any other cause, the owner must go to the county clerk, or to some deputy appointed by the sheriff, under the aforesaid statute of *Phil. and Mary*, for the granting of replevins, to have a *precept in replevin*, in order to retake the cattle, goods, or other thing so distrained.

When such *replevin* is granted, the party in whose favour the same is made, or some other person on his behalf, must, with one or more sureties, enter into a bond to the sheriff, that he will prosecute the *replevin* with effect.

By *stat. 11 Geo. 2. cap. 19. it is enacted*, That all sheriffs &c. having authority to grant *replevins*, shall, on every such *replevin* of a distress for rent taken in their own names, take from the plaintiff and two responsible persons as sureties, a bond in double the value of the goods distrained, (such value to be ascertained by the oath of one or more credible witnesses, not interested in the goods or distress so taken, which the person granting the *replevin* is to administer), conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels so distrained, in case a return shall be awarded before any deliverance be made of such distress, and the sheriff &c. taking such bond, shall, at the request and costs of the *avowant*, or person making consuance, assign the bond to the *avowant*, or person aforesaid, by indorsing the same, attested under his hand and seal, in the presence of two or more witnesses. This assignment of the *replevin* bond may be made without stamp, provided the assignment so indorsed be duly stamped before any action be brought thereon; and if the bond so taken and assigned become forfeited, the assignee may bring his action, and recover in his own name, and the court where &c. may by rule give such relief to the parties according to justice, such rules so to be granted to be a defeazance to the bond.

*The form of the replevin bond.*

**K**NOW ALL MEN by these presents, That we *A. B. of &c.* and *C. D. of &c.* are held and firmly bound to *W. W. Esq;* sheriff of the county of *Surry*, in the sum of ——— pounds of lawful money of *Great Britain*, to be paid to the said *W. W.* or his certain attorney, executors, administrators, or assigns, for which payment to be well and truly made, we bind ourselves, and each of us by himself for the whole and in gross, our heirs, executors, and administrators, firmly by these presents, sealed with our seals this — day — in the year of our Lord 1773, and in the 14th year of the reign of our Lord *George the Third*, by the Grace of God of *Great Britain, France, and Ireland*, King, Defender of the Faith, and so forth.

THE CONDITION of this obligation is such, That if the above bounden *A. B.* do and shall appear at my next county court, to be holden for the county of *Surry*, at the town of *Croydon*, in the said county, on *Thursday* the 4th day of *May* next, and do prosecute therein with effect his suit, which he has commenced against *R. R.* for the taking and unjustly detaining of (*the things taken in distress, naming them particularly*) the goods of him the said *A. B.* and do make a return of the said goods, if a return of the same shall be adjudged, that then this present obligation shall be void and of none effect, or else shall remain in full force and virtue.

Sealed &c.

This bond is engrossed on a sheet of half crown stamped paper, which is procured and done by the sheriff or his deputy.

*The manner of prosecuting the writ of replevin.*

After the above bond is given, the sheriff may issue his precept to his bailiff to replevy the cattle, goods, or other thing distrained immediately, in which precept he is to give a day unto both parties, until the next county court. At the day so appointed by the sheriff, the plaintiff in replevin may be *essoigned*, if his plaint be entered; but if he makes default, then the defendant may demand judgment.

The defendant is not to be *essoigned* at the day so given; for if he makes default, the distress shall be at the same court awarded to the plaintiff; but if both plaintiff and defendant appear on the first day, either by attorney or in person, then the plaintiff ought to put in his declaration, whereto the defendant is to plead by *avowry*, or otherwise, at the next court day afterwards.

If the cattle, goods, or other thing, are not taken, or delivered on the first precept, then the plaintiff in replevin may have an *alias precept*.

If the cattle, goods, or other thing are not taken on the *alias replevin*, nor sufficient cause shewn why they were not, in that case the plaintiff may have a *pluries replevin*.

By

By *stat. 16 Henry 7. cap. 14.* The sheriff may, by *parol*, command his bailiff to replevy the cattle, goods, or whatever else may be distrained, and such precept, by *parol*, is as good and effectual as by warrant in writing.

These replevins by plaint may be removed out of the county court into the *K. B.* or *C. B.* by writ of *recordari* brought by either the plaintiff or defendant. If brought by the defendant, he must shew the cause of such removal of the plaint at the end of the writ.

*Form of the plaint in the county court.*

Surry county court, **A**T the county court of *W. W.* Esq; sheriff of the to wit. county of *Surry* aforesaid, holden at *Croydon*, in and for the said county, the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of our Sovereign Lord *George the Third*, now King of *Great Britain*, and so forth, and in the year of our Lord 1773, before *T. T. A. R.* suitors of the said court, it is thus contained, among other things:

*A. B.* complains against *C. D.* of a plea of taking and unjustly detaining cattle, goods, or other things (*as the case may be*) to wit, (*here name the things taken particularly*) of and belonging to the said *A.* of the price of \_\_\_\_\_ pounds, and so forth, against gages and safe pledges.

|                    |                         |                                                  |
|--------------------|-------------------------|--------------------------------------------------|
| For the plaintiff. | } Pledges to prosecute. | { <i>John Doe,</i><br>and<br><i>Richard Roe.</i> |
| For the defendant. |                         |                                                  |

*W. W.* Esq; sheriff.

*Form of the precept of replevin.*

Surry, **W***. W.* Esq; sheriff of the county aforesaid, to the bailiff to wit. of the hundred of \_\_\_\_\_, and also to my bailiff *T. T.* for this turn, and to each of them jointly and separately, greeting:

WHEREAS *A. B.* has found me sufficient security, as well for prosecuting his claim, as for returning his cattle &c. namely, (*what they consist of*) which *C. D.* took, and unjustly detains, as it is said, if a return of them shall be adjudged: THEREFORE I command you, and each of you, jointly and separately, on behalf of the King, that you cause to be replevied and delivered to the aforesaid *A. B.* his aforesaid cattle &c. (*whatever the distress is*) and that he puts by, or &c. by sureties and safe pledges, the aforesaid *C. D.* so that he be at my next county court, to be held at *Croydon*, in the county aforesaid, to answer the aforesaid *A. B.* of the plea of taking, and unjustly detaining the cattle &c. aforesaid, and in what manner &c. you cause to be certified to me at my next county court, or &c. under a pain to be incurred. Dated under the seal of my office, the \_\_\_\_\_ of \_\_\_\_\_, in the year of our Lord 1773.

By me *W. W.* sheriff.



If the *precept* is granted by the deputy sheriff, then he must set his name at the bottom of the *precept of replevin* thus :

By me *A. A.* one of the deputies of the said sheriff,  
according to the form of the statute.

*The form of the writ of recordari.*

**G**EORGE the Third, by the Grace of God of Great Britain, France, and Ireland, King, Defender of the Faith &c. To the sheriff of Surry, greeting, We command you, that in your full county you cause the plaint to be recorded, which is in the same county, without our writ, between *A. B.* and *C. D.* of the cattle, goods, or other thing, of and belonging to the said *C. D.* taken and unjustly detained, as it is said, and that you have the same record before our Lord the King, at *Westminster*, on (*the return*) under your seal, and the seals of four lawful knights of the same county, of such as shall be present at the said record, and that you prefix the same day to the parties, that then they may be there ready to proceed in the said plaint as shall be just; and have you there the names of the said four knights and this writ. Witness ourself at *Westminster*, the ——— day of ———, in the 13th year of our reign.

Let this writ be executed, if the said *A. B.* desires it, and not otherwise.

When this writ is brought to the sheriff, he must read the same in open court, and must make a record of the plea and suit in the presence of four suitors, and annex the record so made to the back of the writ and return, and certify the same under seal, and under the seals of the four suitors, into the court from whence the writ issued; and also must summon the defendant to appear at the day of the return.

*The sheriff's return indorsed on the writ of recordari.*

**B**Y VIRTUE of this writ to me directed, in my full county, held at *Croydon*, in the county of *Surry* within mentioned, on the ——— day of ———, in the 13th year within written, I have caused the plaint to be recorded, which is in the same county, without the King's writ, between the parties within written, whereof mention is within made; which said plaint appeareth in a certain schedule to this writ annexed; and I have that record before our Lord the King, at *Westminster*, at the time within mentioned, under my seal, and the seals of *T. T. C. C. K. K.* and *R. R.* four lawful knights of the said county, who were present at the said record; and I have prefixed the same day to the parties within written, that then they may be there ready to proceed in the said plaint as shall be just, as within I am commanded.

*W. W.* Esq; sheriff.

If the sheriff or his bailiffs, on any of the foregoing *replevins* returns at the next county court, that the cattle are *eloigned* &c. or makes any other return thereon, whereby it appears they could not deliver the cattle, goods, or other things taken in distress, for some default of the distrainer. In that case the sheriff ought to make, or cause enquiry to be made, if the matter returned be true, and if he finds the same so to be, then the plaintiff is entitled to his precept in *Withernam*, to take the proper cattle, goods, or other thing of the party distraining to the amount or value of the chattels, goods, or other thing so taken and distrained by him.

*Form of the precept in Withernam.*

Surry, *W. W.* Esq; high sheriff of the said county, to all and singular my bailiffs of the said county, greeting:

FORASMUCH AS *A. B.* hath come before me, and found me sufficient security, as well to prosecute his complaint, as to return his cattle, goods, or other thing distrained, *as the case may be*, if a return thereof shall be adjudged: AND THEREFORE, by virtue of my office, I have often commanded you, and every of you, that you, or some one of you, shall cause to be replevied and delivered to the aforesaid *A. B.* his cattle, goods, or other thing distrained, which *C. D.* took, and unjustly detains, *as it is said*, and that you, on my several precepts of *replevin* to you directed as aforesaid, have certified, that the cattle, goods, or other thing distrained as aforesaid, are *eloigned* to places to you unknown, so that you could not have the view of them; THEREFORE I now command you, and every of you, that you, or some one of you, take in *Withernam* chattels to the value of the said cattle, goods, or other thing distrained of the said *C. D.* to be delivered to the said *A. B.* for his cattle &c. as aforesaid taken and *eloigned* as aforesaid; And also, that you put by safe and secure gages and pledges the said *C. D.* so that he be and appear at my next county court at *C.* (the time when the said *C. D.* is to appear) to answer to the said *A. B.* of the plea aforesaid, and you, or one of you, is to return an answer to this my mandate at my said next county court; GIVEN under the seal of my office, in the ———— year of the reign &c.

If on this precept in *Withernam* the bailiff returns a *nihil habet*, i. e. that the party who hath made the distress has not any cattle, goods, or other thing, to be taken in *Withernam*, then the party who has had such distress made on him as aforesaid, may procure an *alias capias* in *Withernam*.

And if on such *alias capias* in *Withernam*, the bailiff returns a *nihil habet*, the party distrained on may issue a *pluries* in *Withernam*, which he may continue to issue as often as a *nihil* is returned by the bailiff as aforesaid.

*Form of the pluries capias in Withernam.*

**G**EORGE III. &c. To the sheriff of Surry, greeting: WHEREAS we have many times commanded you, that justly &c. to *A.* his cattle &c. which *C.* &c. or signify the cause &c. wherefore you would not, or could not execute our command many times directed to you thereupon, and you have signified to us, that after the aforesaid *C.* took the cattle of the said *A.* he drove them into your county, and from the county aforesaid into the county of *M.* wherefore you could not replevy to the said *A.* WE being willing to oppose the malice of him the said *C.* in this behalf, command you, that you take the cattle of the said *C.* in your bailiwick in *Withernam*, and detain them until you can replevy to the said *A.* his cattle &c. aforesaid, according to the law and custom of our realm, and the tenor of our commands aforesaid before to you &c.

*Note,* In this writ, the cause alledged by the sheriff, why he could not replevy the cattle &c. should be set forth; as for example,

And after the said *C.* took those cattle &c. he elbigned the said cattle &c. so that you could make no delivery thereof to the said *A.* as you have signified to us; WE &c. command you, that without delay you take the cattle &c. as the case is, in your bailiwick, to the value of the cattle &c. of the aforesaid *A.* in *Withernam*, and detain them until you can replevy to the said *A.* &c.

If the sheriff return on the *pluries*, that he hath sent unto the bailiff of the liberty, who hath return of writs &c. and that the bailiff of the liberty hath given answer to the sheriff, that he cannot execute the writ, because he cannot have a view of the cattle &c. which were so taken, then the court in which such return is made shall award a writ of *Withernam* directed unto the sheriff, and the sheriff shall thereupon make his precept unto the bailiff of the liberty, and if the bailiff of the liberty does not make a return thereof unto the sheriff, then the sheriff shall return the whole procedure into the court, and thereupon the court shall award a writ of *Withernam*, and a *non omittas* with the same.

*Form of the non omittas capias in Withernam:*

**G**EORGE the Third &c. To the sheriff of Surry, greeting: WHEREAS we have many times commanded you &c. (until) or could not execute our command, many times directed to you thereupon, and *J.* of *C.* bailiff of the liberty of *S.* whom you have made to have the return of our writ, has answered you, that he could not do execution of that writ, because he could not have a view of the cattle &c. aforesaid, as you have signified to us; WHEREFORE we command you, that without delay you should take the cattle &c.

of



of the aforesaid C. in your bailiwick in *Withernam*, and detain them until you could replevy to the said A. his cattle &c. according to the tenure of our command &c. thereupon to you directed, or should signify to us the cause &c. why you could not &c. and you have returned to us, that the same J. bailiff of the liberty aforesaid, whom you have made to have the return &c. hath given you no answer, thereupon we command you, that you do not omit, because of the liberty aforesaid, but that you enter into it, and take &c. in *Withernam*, until &c. according to &c. before you &c. Witness &c.

*Note*, The party in the county court has no remedy beyond the *pluries capias* in *Withernam*, and therefore the proceedings on the writ of *Withernam* are seldom carried on in the sheriff's court.

If the sheriff refuses to award a writ of *Withernam*, or if he makes a precept to his bailiff to take the others cattle &c. in *Withernam*, and the bailiff will not execute the process, and the party distrained on cannot have the cattle delivered in *Withernam* in the county court for any other cause in either of these cases, the party distrained on may have a special writ of *Withernam* out of the court of *Chancery*, by the filacer of the proper county, directed to the sheriff, commanding him to make execution of the first judgment.

*Form of the writ of Withernam from the Chancery.*

GEORGE the Third &c. To the sheriff of *Surry*, greeting :  
A. hath shewn unto us, that C. had unjustly taken and detained the cattle &c. of the said A. and the said A. prosecuted before you for replevying to him the cattle aforesaid, according to the law and custom of our kingdom ; and although it was testified by K. your bailiff, whom you sent to replevy the cattle &c. of the said A. and found by an inquisition made in your full county (*as the custom is*) that the same bailiff could not have a view of the said cattle &c. to replevy them to the said A. wherefore it was considered in your full county, that the cattle &c. of the said C. in your bailiwick should be taken in *Withernam*, and detained until his cattle &c. aforesaid could be replevied to him the said A. according to the law and custom of our kingdom, yet the said A. has not yet obtained execution of the consideration aforesaid, to the no little damage and grievance of him the said A. and because we are willing and desirous to relieve the said A. in this matter, WE command you, if it be so, that you take the cattle &c. of the said C. in *Withernam*, and detain them until you can replevy to the said A. his cattle &c. aforesaid, according to the law and custom of our kingdom of *England*, and according to the consideration aforesaid &c.

If the party distrained on pursues not his replevin, according to the condition of the bond given to the sheriff, or becomes *non suit* in

the action, or if the right of distraining be found against him at the trial, then the person that took the distress shall have judgment there to have the cattle &c. so replevied restored to him again, which is called a *retorno averiorum*, i. e. a return of the beasts, and in execution of such return shall have a writ *de retorno habendo*.

If the cattle &c. are not restored on this writ, then an *alias* follows.

If the sheriff returns a *nihil* on these writs, the party who distrained may have the like *retorno habendo* to have the cattle &c. of the pledges (which were given on the replevin) delivered to him, instead of those which were first distrained, and if on the writ against the pledges, the sheriff returns a *nihil*, then the party may have a *scire fac.* against the sheriff, that he restore &c. out of his own cattle &c. If on any of these writs the sheriff will not do execution, or does not duly perform his office, an *attachment* may issue against him directed to the coroner.

The same remedy may be taken against the sheriff, if he does not take pledges on a replevin brought, or does not take sufficient pledges. On replevins, the sheriff is to take two sorts of pledges, viz. one by the common law, which are pledges for prosecuting the suit, and the other by the statute of *Westminster 2. cap. 2.* which are pledges to make a return of the things taken, if so adjudged.

*What pledges are adjudged sufficient for the sheriff to take on a replevin brought.*

They must be sufficient in estate, viz. capable to answer in value, and also sufficient in law, that is, under no incapacity, therefore infants, feme covert, persons outlawed &c. cannot be taken by the sheriff on a replevin bond.

The pledges must be by the bodies of natural persons, therefore not of bodies politic, or corporate, nor can he or his bailiff take a pawn or sum of money in lieu of pledges.

By stat. 11 Geo. 2. the sheriff, or his bailiffs in his name, is to take a bond both of the sureties and the party, at the time when the replevin is granted, for prosecuting the suit, and also to make a return according to the condition.

*His remedy against the pledges, if the condition of the bond is not performed.*

He may sue out a *scire fac.* against the pledges on which they shall be compelled to plead something in discharge of the same, or to tender the value of the cattle &c. but on such *scire fac.* they shall not be admitted to say, they were not pledges; for this is contrary to the return made by the sheriff.

If the sheriff delivers the distress to the plaintiff in the replevin, without pledges to return it, if the taking be adjudged lawful, the sheriff,

sheriff, out of his own goods and chattels, must, in that case, answer the same.

Besides the pledges for prosecuting the suit, there are other pledges to be taken by the sheriff, viz. for *gaging deliverance* &c. for example, if a person has sued a replevin, but has not the cattle &c. delivered to him thereon, and he that distrains avows such taking, then the person that so avows on the plaintiff's setting forth in his pleading, that the cattle are not delivered, and prays pledges, he shall not only *avow* the distress, but *gage deliverance*, that is, give in sureties that he will deliver the cattle so distrained on, if adjudged against him.

Where a person claims property, or where the cattle died in the pound, or where the distress was taken in right of the crown, in these cases the sheriff is to *surcease*.

If on a replevin in the county court, the defendant claims property in the cattle, goods, or other thing taken in distress, in that case before the same can be replevied, it must be decided before the sheriff at the suit of the plaintiff by a writ called *de proprietate probanda* issued from the courts above, e'er they can proceed in the replevin in the sheriff's court.

If on the replevin any thing touching the *freehold* comes in question, or *antient demesne* be pleaded &c. the party can proceed no further in the county court, hundred court, or court baron.

If on the trial on the writ of *proprietate probanda*, a verdict is found for the plaintiff, that is, the party distrained on, then the sheriff is to make replevin; but if a verdict be found for him that took the cattle, goods, or other thing, the sheriff is to *surcease*, and must return the claim of property on the writ, that it may be tried above again, where the property being again put in issue, it shall be finally determined.

No one but he who is a party to the replevin can bring a writ of *proprietate probanda*; therefore if on a replevin the cattle of a stranger, being no party to the suit in replevin be taken, he cannot have this writ.

This writ issues out of the *B. R.* or *C. B.* if the suit is prosecuted there, or otherwise out of *Chancery*.

On the replevin being brought, if the plaintiff makes default, and becomes *non suit* before a declaration delivered, or if judgment be given against him on a verdict, then the person who distrained may have a writ of *retorno habendo*, without making any *avowry*, if the defendant abates the suit by plea &c. he cannot have such writ without making *avowry*.

*Note*, The writ *de retorno habendo* is not returnable.

If the goods, cattle, or other thing taken on a distress are *eloigned* out of the county where taken, or are so secreted that the sheriff cannot find them, and this be found by the *sheriff's inquest*, the party aggrieved may have a writ of *Withernam* directed to the sheriff for the taking of so much of the party's own cattle, goods, or other thing, to the value of those *eloigned*. If they are put into a castle, or other place



place of security in his own county, the sheriff may take the *posse com.* and break into such place of security to make replevin.

If on a replevin the defendant claims property, which on the writ *de propr' prob'* tried in the county court, a verdict is found for the plaintiff, and the sheriff returns it accordingly on the writ, and also that the defendant has *eloigned* the cattle, goods, or other thing taken in distress, then the plaintiff shall have a writ of *Withernam*.

If the cattle, goods, or other thing taken in distress, are impounded in a *franchise*, the bailiff of such *franchise*, by a warrant from the sheriff, may, or if he does not, or will not, the sheriff himself may replevy such cattle &c. If the plaint be in a *franchise*, and the sheriff makes his warrant to the bailiff, who returns, that he cannot come at the cattle, goods &c. the sheriff may enquire thereof at the next county court, and the same being found accordingly, he may *officially* grant his precept in the nature of a *Withernam*, to take so much of the defendant's goods &c. in lieu thereof, or the plaintiff in the replevin may have a special writ of *Withernam* from the *Chancery*.

Replevins by writ in the county court &c. may be removed into the *K. B.* or *C. B.* by writ of *pone*.

Replevins by *plaint* in an inferior court, may be removed by *recordari*.

Replevins by *plaint* may be removed by *certiorari*.

If the plea be depending in any of the King's courts, and the replevin be removed either by *pone* or *recordari*, (though the defendant must) yet the plaintiff need not assign the cause of removal in the writ; but if the plea is depending in any inferior court, as in the court of the *hundred* or *wapentake* &c. or in the court of any lord of a manor &c. in such case the cause of removal, either by the plaintiff or defendant, must be shewn in the writ.

If the replevin be removed out of the county court, or court baron, by the writ of *pone* or *recordari* into the *C. B.* &c. and afterwards the plaintiff in the suit in replevin, either before or after *avowry* made becomes *nonsuit*, the defendant may again distrain for the same cause as he distrained at first, and the party distrained on, shall have no writ of *recaption* for the damages he sustained by such second distress, because there is no plea depending on the replevin, which is the ground for the writ of *recaption*.

### *Avowry.*

Is the plea or justification made by the distrainor, setting forth the cause for which he distrained, and avowing his right thereto.

It is in the nature of a declaration, and therefore must contain sufficient matter &c. on which the *avowant* may have judgment to have a return awarded, therefore if such plea want substance, it will be adjudged ill, nor will the subsequent pleadings of the plaintiff help it. If it wants form only, or if the circumstances of time, place &c. are omitted, this defect may be cured by the subsequent pleadings on the other side.

The sheriff may, at any place within his county, on complaint made to him of the taking of cattle, goods &c. replevy the same immediately on pledges to prosecute the suit, and a return of the cattle &c. adjudged, and is not to stay till the next county court day, but the plaintiff shall be restored to his property forthwith.

The sheriff is to enter the plaint, for according to the doctrine of *Littleton*, a man shall not be put to answer to any matter or thing, except the same be in writing, and it might be an injury to the party seeking redress to stay for the same till the next county court day; but the plaint, and the proceedings thereon, and the day given by the sheriff for the parties to appear and prosecute the suit so commenced, by entering the plaint as aforesaid, shall be entered by the sheriff, or his deputy, at the next county court.

It is held by *Littleton*, that the sheriff, after the aforesaid steps have been taken, may make out his precept to his bailiff to make *deliverance* &c. either by parol or in writing.

*Of the writs necessary for the removal of the replevin.*

*The recordari.*

IF the plaint is in the county court, and the replevin is sued there without a writ, then if the plaintiff or defendant should chuse to remove the plaint, he must sue out a writ of *recordari* from the Chancery, directed to the sheriff of the county where the plaint is brought; for the form of which writ, see page 56.

If a replevin be sued by plaint in the court of any other lord than in the county court before the sheriff, then the *recordari* to be sued out by the plaintiff or defendant shall be directed unto the sheriff in the following form:

*Form of the writ of recordari.*

GEORGE the Third &c. To the sheriff of S. greeting: WE command you, that having taken with you four discreet and lawful knights of your county, you go in your own person to the court of N. of J. and in that full court you cause to be recorded the plaint which is in the same court, without our writ, between (the parties, plaintiff, and defendant's by name), and have that record under your seal, and the seals of four lawful men of the same court, who were present at that record &c. and to the parties &c. as in the first writ of *recordari*, page 56, because the said C. is the bailiff of the said N. of J. of his court aforesaid, and holds the pleas of the same court, and therefore ought not to be a judge in his own cause.

If the *recordari* be returnable in the C. B. and at the day of the return the sheriff returns the same, *tards* the party who sued out the *recordari*, shall have an *alias* out of the same court, directed to the sheriff &c.

If

If the plea be discontinued in the *county court*, yet the plaintiff or defendant may remove the plaint into the *C. B.* or *K. B.* by *recordari* &c. and such removal will be good, when removed to the courts above, the plaintiff shall declare on the plaint. If the plaint be continued in the *county court*, and issue joined thereon, in that case, on the *recordari* brought, nothing shall be removed by the same but the plaint; and if such plaint is removed into the *C. B.* the plaintiff in replevin may declare *de novo*.

If a record be removed out of a court of record by the writ of *recordari facias*, it is held to come in without *warranty*; and in that case the court shall not hold plea of the same; but if a record comes into court without a *warranty*, the party removing the same, may sue out a writ, directed to the justices of the court, that they proceed on the record *quod coram vobis residet*. If the *recordari facias* bears date before the plaint was entered in the county court, yet the record is held to be well removed, because both courts are courts of record; but if the record be removed out of the court of any other lord by such writ, which bears *teste* before the entry of the plaint, such removal is not good.

### *The pone.*

If a replevin be sued by writ out of *Chancery*, and the plaintiff or defendant in such replevin shall be minded to remove the plaint out of the *county court* into the *C. B.* or *K. B.* it must be by writ of *pone* issuing out of the *Chancery*.

### *Form of the writ of pone in C. B.*

**G**EORGE the Third &c. To the sheriff of *S.* greeting: AT the petition of the plaintiff, put before our justices of the bench at *Westminster*, such a day, the plea which is in your county, by your writ between *A.* and *C.* of the cattle, goods &c. of the said *A.* taken and unjustly detained, as it is said, and summon by good summoners the aforesaid *C.* that he be then there, to answer the aforesaid *A.* thereupon, and have you there the summoners and this writ.

If the plaint is to be removed into the *K. B.* the writ of *pone* runs thus:

George the Third &c. To the sheriff of *S.* greeting: AT the petition of the plaintiff put before us, wheresoever we shall then be in *England* &c. as in the foregoing writ in *C. B.* *mutatis mutandis*.

*Note,* The plaintiff in the replevin may remove the plaint, without shewing any cause for such removal.

If the defendant removes the plaint in replevin sued by writ, he must shew an evident cause in the writ for such removal, which must be inserted therein after the *teste* of the writ.

*Form*



*Form of the writ of pone for the defendant in C. B.*

**G**EORGE the Third, &c. To the sheriff of S. greeting: PUT before our justices of the bench at Westminster, such a day, the plea which is in your county, by our writ between A. and C. of the cattle, goods &c. of him the said A. taken and unjustly detained, as it is said, and tell the aforesaid A. that he may be their, if he will, to prosecute this plea thereupon against the aforesaid C. and have you there this writ, and the other writ. Witness &c.

*The cause shewn by the defendant to entitle him to this writ.*

AND because the said C. took the cattle, goods &c. aforesaid, within his fee, for customs and services due to him, as it is said, if the cause be true, and the aforesaid C. requires it, let execution of this writ be done, otherwise not.

*Note,* The cause shewn must be varied according to the nature of the fact.

If the writ of *replevin* be prosecuted in any other court than the *King's courts*, then such plaint cannot be removed by the plaintiff or defendant, without shewing the cause in the writ to the effect following:

AT the petition of the plaintiff put the plea which is in your county, by our writ between A. and C. of a certain *cow* of and belonging to him the said A. taken and unjustly detained, as it is said, and summon by good summoner the aforesaid C. that he be then there to answer the aforesaid A. thereupon, and have you there this writ and the other writ. WITNESS &c. BECAUSE the aforesaid C. is Lord of the court of B. wherein that plea dependeth, by return of our writ, by which the said A. cannot obtain justice in the plea aforesaid, in the same court against the aforesaid C. as it is said.

If the plea be removed at the suit of the plaintiff in *replevin*, then when he hath shewn his cause for such removal, he shall say afterwards in the same writ,

“ For which the said complainant cannot obtain justice in his plea  
“ aforesaid against the said C. in the same court, as it is said.”

If the plea be removed at the instance of the defendant, then after the cause shewn in the writ, say,

“ For which the same bailiff favours him the said A. in his plea  
“ aforesaid, as it is said, let execution be done &c.”

*The recaption.*

This writ lies where a person distrains on another for rent, or service, or any other thing, and pending the plea the distrainor distrains again for the same arrears the very same thing, and by this writ he shall recover damages for such *second* distress.

For *damage feasant* in lands, a person may distrain the beasts of any one which he finds on the lands *doing damage*, so often as he shall find them so doing, because such distress is made for a new trespass and a new wrong done in his land.

If the lord distrains for rent &c. behind, and pending the plea he commands his servant to distrain for the same rent &c. and the servant doth distrain accordingly, the tenant shall have this writ against the lord for such distress.

On this writ being brought, the defendant shall not *avow*, as is usual, on a *replevin*, but shall justify the taking &c. as in an action of *trespass*; for on this writ the plaintiff shall recover damages only for the *contempt* that the defendant hath done to the law, and not for the taking &c.

If a plaint be removed out of a *county-court* into the *C. B.* by *pone* or *recordari*, and the plaintiff becomes *nonsuit* before or after an *avowry* made, the lord may distrain again for the same cause, and the tenant shall not have a *recaption*, because there is not any plea depending; but notwithstanding the plaintiff may sue out a writ of *second deliverance* on the same record.

This writ lies as well where the lord distrains the tenant again for the same cause, where the plea is depending in the *county court* before the *sheriff*, as where it is depending in the courts at *Westminster*.

If the plea be depending in the *county court* before the *sheriff*, then the writ of *recaption* is as follows :

*Form of the writ of recaption to a plaint in the county court.*

GEORGE the Third &c. To the sheriff &c. greeting: *A.* has shewn unto us, that WHEREAS you had replevied to the said *A.* without our writ, his cattle &c. which *C.* took and unjustly detained, and had given a day, until at your next county court, and had attached the aforesaid *C.* to answer hereupon to the aforesaid *A.* he the said *C.* after that *attachment*, again took the cattle &c. of the said *A.* on the same occasion that he before took them, and detains them as before; and because this is unjust, and manifestly against our peace, WE command you, that without delay you cause the cattle &c. of the said *A.* to be delivered until the chief plea between them be determined; and if you shall find that the aforesaid *C.* again took the cattle of the aforesaid *A.* on the same occasion that he before took them, and detains them as before, then have the body of the aforesaid

said C. before you, and the keepers of the pleas of our crown at your next county court; and if by your bailiffs by whom the cattle &c. of the aforesaid A. were replevied, and by other honest and lawful men of your county, he can be convicted of a *second* taking for one and the same occasion, then to chastise him the said C. by amerciamment, that such chastisement may make others afraid of offending in the like case &c.

If the plaint be in the county court, by writ of replevin depending before the sheriff, the form of the recaption must be thus.

*Form of the writ of recaption, where the plaint is in the county court by writ.*

GEORGE the Third &c. To the sheriff &c. greeting: A. has shewn unto us, that WHEREAS he lately brought to you our writ of replevying to him, his cattle &c. which C. took and unjustly detains, and you have replevied those cattle &c. to him the said A. and given to him a day, until at your next county court &c. as in the foregoing writ.

If the plaint is removed out of the county court by writ of recordari, the writ of recaption must be in the following form.

*Form of the writ of recaption, where the plaint is removed out of the county court by writ of recordari.*

GEORGE the Third &c. To the sheriff &c. greeting: A. has shewn unto us, that WHEREAS C. has taken and unjustly detained the cattle &c. of the aforesaid A. and you on the complaint of him the said A. as the custom is, had replevied those cattle &c. to the said A. and given to him a day, until at our next county court, and had attached the aforesaid C. to answer on this to the aforesaid A. and afterwards WE commanded you, that you should have the record of the plaint aforesaid before our justices at Westminster, on such a day last past, the said C. pending the plea before the said justices, has again taken the cattle &c. aforesaid &c. as in the foregoing writ.

When the plaint is removed out of the county court by writ of pone into the C. B. then the writ of recaption must be in the following form.

*Form of the writ of recaption when removed by pone into the C. B.*

GEORGE the Third &c. To the sheriff &c. A. has shewn unto us, that WHEREAS he had lately brought to you our writ of  
 † K 2 replevying



replevying to him his cattle &c. which C. took and unjustly detained, and you had replevied those cattle to the said A. and given him a day, until at your next county court, and you had attached the aforesaid C. to answer on this to the aforesaid A. and afterwards WE commanded, that plaint to be put before our justices at *Westminster*, such a day last past, the said C. pending the plea before the same justices, again took the cattle &c. of the aforesaid A. on the same occasion for which he before took them, and detains them as before, and does not permit justice to be done in contempt of our commands; and because this is unjust, and manifestly against our peace, WE command you, that if the aforesaid A. make you secure touching the prosecution of his claim &c. then put by gages &c. the aforesaid C. that he be before our justices aforesaid, to answer to us concerning the contempt aforesaid, and to the aforesaid A. of the trespass aforesaid, and have you there the names of the pledges, and this writ, and cause those cattle to be replevied to the same A. Witness &c.

*Note*, If a person sue out a *replevin* by writ, and the sheriff send unto the *bailiff* of the *liberty* to replevy the cattle &c. because that the taking was within the liberty, and afterwards the plaint is removed from the county court by writ of *pone* into the C. B. and afterwards the lord, or the party who distrained before distrains again for the same cause, then the person so distrained on may have the following writ of *recaption*.

*Form of the writ of recaption to recover catle &c. taken in a liberty &c.*

GEORGE the Third &c. To the sheriff &c. greeting: A. has shewn unto us, that WHEREAS he lately brought to you our writ of replevying to him his certain cow, which C. has taken and unjustly detains, and the bailiffs of the liberty of the manor of R. (whom you have made to have the return of our writ aforesaid) replevied that cow to the said A. and attached the said C. to answer hereupon to the aforesaid A. and afterwards WE commanded, that plaint to be put before our justices at *Westminster*, on such a day, in the 12th year of our reign, the aforesaid C. has again taken the cattle &c. of the aforesaid A. pending the plea aforesaid, before the bailiffs of the liberty of the aforesaid manor of R. aforesaid, before whom that plaint, according to the liberties granted to the lord of the said manor by the same justices is returned to be pleaded &c.

If the lord has a *hundred* or a *wapentake*, and has power to hold pleas of *unlawful distress* &c. and a person distrains another there, for which he sueth out a writ of *replevin* within the hundred, and pending the plea there, the party who distrained before, distrained the same person again for the same cause, then he who is so distrained on, shall have his writ of *recaption* in the following form.

*Form*

*Form of the writ of recaption to recover cattle &c. taken in a hundred or wapentake.*

**G**EORGE the Third &c. To the Sheriff &c. greeting: *A.* has shewn unto us, that WHEREAS *C.* had taken and unjustly detained the cattle &c. of the said *A.* and the bailiffs of the manor of *H.* on the complaint of the said *A.* (as the custom of the said manor is) had replevied those cattle &c. to the said *A.* and given to him a day, until at the next wapentake of the aforesaid manor of *H.* and had attached the said *C.* to answer to the aforesaid *A.* on this, and afterwards WE commanded you, that having taken with you &c. you should go to the wapentake, and in full wapentake &c. without our writ between him the said *A.* and the aforesaid *C.* of the cattle &c. aforesaid, of him the said *A.* taken &c. and that record &c. the same *C.* pending the plea &c. on the same occasion on which they were first taken &c. put &c. as in the foregoing writ of recaption.

The practice is, that if a person be distrained on, and he sues out a replevin by plaint before the sheriff in his county court, and afterwards pending that plaint he is again distrained on for the same cause of distress, that then he shall have a writ of recaption directed to the sheriff, and the sheriff shall hold plea thereon.

If a person is distrained on within any liberty or franchise, and he sues out a replevin there by plaint or by writ, and pending the same he be again distrained on for the very same cause by the person who distrained on him before, on such distress he shall have a writ of recaption, because in that case the plaint is not pending before the sheriff, or before the justices &c. and the King will not direct the writ of recaption but to the sheriff.

If the plaint was removed by writ of pone or recordari out of the liberty before the justices &c. then the person who was distrained on shall have a writ of recaption as well for the distress made before the writ of pone and recordari issued, as if the retaking had been after the writ of pone and recordari were sued forth.

A person convicted before the sheriff on a writ of recaption &c. shall be amerced, and render damages unto the party for such contempt.

If a person be convicted before the justices &c. on a writ of recaption, he shall be fined, and not amerced, and also shall render damages unto the party for the contempt.

*The writ de replegiare de averiis.*

If a person takes more live cattle &c. than one beast, then this writ must be in the following form.

*Form*

*Form of the writ de replegiare de averiis, when more than one beast is taken.*

**G**EORGE the Third &c. To the sheriff &c. greeting. We command you, that justly, and without delay, you cause to be replevied the cattle &c. of the said *A.* which *C.* took and unjustly detains, as it is said, and afterwards thereupon cause him justly to be removed, that we may hear no more clamour thereupon for want of justice &c.

*Note,* If the writ is brought for the return of dead cattle &c. it must be in the following form.

*Form of the writ de replegiare de averiis for dead cattle &c.*

**G**EORGE the Third &c. To the sheriff &c. WE command you, &c. that you cause to be replevied to *A.* his goods &c.

*Note,* In the count or declaration, the plaintiff in replevin ought to declare for divers things.

If there is but one live beast distrained, then the writ shall be in the following form.

*Form of the writ de replegiare de averiis, when there is but one live beast taken.*

**G**EORGE the Third &c. To the sheriff &c. WE command you, that you cause to be replevied to *A.* his certain (*whatever the thing taken should be*) &c.

If but one thing is taken in distress, and that should be a dead chattle, the writ must run in the following form.

*Form of the writ de replegiare de averiis for recovering goods &c.*

**G**EORGE the Third &c. To the sheriff &c. greeting: WE command you &c. that you cause to be replevied to *A.* a certain chest of drawers &c.

*Note,* If the sheriff does nothing on this writ, the party shall have an *alias replegiare* for &c. and in such writ he may have this clause,

“Or signify to us the cause why you would not, or could not execute our command heretofore directed to you thereupon &c.”

This



This writ is returned into the *K. B.* or *C. B.* and, if not served, the party shall have a *pluries* returnable into the *K. B.* or *C. B.* and the *pluries* must always have this clause, or signify to us the cause; but this clause is not absolutely necessary in the *alias replegiare fac. &c.*

The plaintiff in the *replevin* may sue out the *replevin*, the *alias*, and the *pluries* together, and deliver them to the sheriff at the same time, and if the sheriff does not return the *pluries*, the plaintiff may have an *attachment* against the sheriff, directed to the coroner, to be executed by him.

If the sheriff on the return of the writ of *replevin*, returns *sicut alias*, or *pluries*, that he has sent unto the bailiff of the liberty or franchise &c. who has given him no answer, or has returned for answer, that he will not make deliverance &c. in that case the plaintiff in the plaint shall have a *non omittas* &c. directed unto the sheriff, that he may enter into the liberty or franchise, and make a return; and if the sheriff does not make a return accordingly, the party aggrieved shall have an *alias non omittas* directed to the said sheriff, and afterwards, in case of failure of such writ, a *pluries non omittas* &c.

#### *Directions as to returning these writs,*

If the sheriff returns, "That he commanded the bailiff of the liberty or franchise &c." who gave no answer, or if the sheriff returns, "That the bailiff of the liberty or franchise &c. will not make deliverance of the cattle &c." these are deemed not good returns; for by *stat. of Westminster I. cap. 17.* it appears, that the sheriff on such a return made to him by his bailiff, ought immediately to enter such franchise, and make deliverance of the cattle &c. so taken as aforesaid.

By the *stat. of Marlebridge, cap. 21.* If a plea of *Withernam* be in the county court by plaint, and the sheriff send unto the bailiff of the liberty or franchise to make deliverance, and the bailiff does not comply with such mandate, the sheriff may officially enter such liberty or franchise, without any writ directed to him to warrant his so doing.

If the sheriff on the *pluries* directed to him as aforesaid, returns, "That the aforesaid *C.* took the cattle &c. of the aforesaid *A.* and has driven them out of the county aforesaid into the county of *K.* whereby he could not replevy the said cattle &c. to the aforesaid *A.* &c. or if he should return, that he sent to the bailiff of such liberty or franchise, whose official duty it was to return such writ &c. and he returned for answer, That the cattle &c. were *eloigned* into divers liberties or franchises, by reason whereof he the said bailiff cannot have a view of the cattle &c. to deliver them according to the mandate from the said sheriff; or if the bailiff of the liberty or franchise return to the sheriff, that after the taking &c. the defendant had *eloigned* the cattle &c. out of his bailiwick, so that he cannot deliver them according to the mandate sent to him from the sheriff as aforesaid; or if the bailiff of the liberty or franchise return to the sheriff, That the defendant has *eloigned* them into places unknown to him, so that he cannot have a view of such cattle

cattle &c. to deliver them according to the *mandate* of the said *sheriff*; or if he returns on such writ, That he sent unto the bailiff of the *liberty* or *franchise*, who returned him for answer, That the defendant had impounded the cattle &c. within a particular *liberty*, so that he cannot come at them to make *delivery* according to the *mandate* of the said *sheriff*; on all, or any of these returns made to the *sheriff* to such process directed to him as aforesaid, the plaintiff in the plaint may issue out his writ of *withernam*, to take as many of the defendant's cattle &c. directed to *sheriff*, for the forms of these different writs, according to the circumstances of the case. See page 57, 58, and 59.

If a person sues out a *replevin* in the *county court* without a writ, and the bailiff, of the *liberty* or *franchise* returns to the *sheriff* on his *mandate* to him, that he cannot have a view of the cattle &c. to deliver them, as by the precept from the *sheriff* he is commanded, then the *sheriff* must, by *inquest of office*, make inquiry of the same; and if it shall be found by a jury, that the cattle &c. are *eloigned* &c. then the *sheriff* must, in his next *county court*, award a writ of *withernam* to take the defendant's cattle &c. and if he refuses to award such writ, the plaintiff may have a writ out of the *Chancery*, commanding the *sheriff* to award such writ of *withernam*; for form of which writ, see page 59; if this writ is not executed by the *sheriff*, he may have an *alias* and *pluries*, and on the same not being returned by the *sheriff*, he may have an *attachment* against him.

### *The retorno habendo.*

This writ is *judicial*, and lies on behalf of a person who has *avowed* a distress, and proved the same to be lawfully taken, or it lies where (on removal of the plaint into the courts at *Westminster*) the plaintiff, whose cattle &c. were replevied, makes default, or does not declare or prosecute his action in due time, and thereby becomes *non-suit* &c.

By this writ the *sheriff* is commanded to make a return of the cattle &c. to the defendant in the *replevin*, being the person who first distrained such cattle &c.

### *The second deliverance.*

This writ is *judicial*, and issues on the former record by *stat. of Westminster 2. cap. 2.* and is directed to the *sheriff* of the county where the first distress was made. It may be brought after the plaintiff is *non-suited*, or a *retorno habendo* awarded on behalf of him that is distrained on, commanding the *sheriff* to replevy the same again, on security given him by the party for a redelivery of the cattle &c. in case the distress be justified.

By *stat. of Westminster 2. cap. 2. 21 Edw. 4. cap. 6. and 2 Hen. 4. cap. 23.* If one of the parties be *non-suited* in the writ of *replevin*, he shall have a writ of *second deliverance* awarded on the roll of the former judgment.

By *stat. 2. Hen. 4. cap. 23.* If judgment be given for the defendant in replevin on a demurrer or verdict, no writ of *second deliverance* shall issue.

If the plaintiff be *non-sued* in the county court, and the plaint be afterwards removed into the *K. B.* or *C. B.* the writ of *second deliverance* may issue from thence.

By *statutes 3 Hen. 6. cap. 9. 21 Hen. 7. cap. 28. 12 Hen. 7. cap. 4. and 49 Eliz.* If the plaintiff be *non-sued* in the replevin after the declaration, the writ of *second deliverance* must correspond with the count in the replevin, in the day, place, and number of cattle, or thing taken in distress, on which the said suit in replevin is founded.

*The retornum irreplegiabile.*

Is a judicial writ directed to the sheriff, for final restitution or return of cattle, unjustly taken by another; and so found by verdict, or after a *non-suit* on a writ of *second deliverance*.

At common law, it was brought either when it was found against the plaintiff by an issue joined, on *stat. 36 H. 6. cap. 8.*

Or if the defendant did not answer to the *avowry*, there the cattle were to be *irreplevisable*.

But by *stat. Westminster 2. c. 2.* this writ is to issue on a *non-suit*, viz. in *second deliverance* only.

On a *non-suit* in replevin, this writ shall not go except the *non-suit* be after a verdict. *Stat. 14 H. 7. cap. 6.*

If the plaintiff is *non-sued* in replevin, after a *second deliverance*, there shall be a return *irreplevisable* before the *avowry*.

If this writ be awarded, the owner of the cattle may offer the arrearages; and if the defendant refuses to deliver the distress, the plaintiff may have an action of *detinue*, because the distress is only in nature of a pledge.

*Directions as to the writ of replevin.*

*First, Who may have this writ.*

IT is a general rule, that he who has not property in the thing distressed, shall not have a replevin. *Statutes 9 E. 3. 340. 6 H. 4. 2. 7 H. 4. 18. 11 H. 4. 17. 2 H. 6. 14. 20 H. 6. 18. 35 H. 6. 22. 39 H. 6. 35 &c.*

Therefore a lord for a heriot, a parson for a mortuary, shall not have it before seizure, for the seizure vests the property in them, and then they may have this writ. *Statutes 10 H. 4. cap. 1. 16 H. 7. cap. 5.*

A person that has no property, either *general, special, or qualified*, shall not have it; but he that has cattle by way of *agistment*, may have this



this writ, because he has a special property. *Stat. 42 E. 3. 18. 21 E. 3. 54.*

A person that has cattle to manure or compester his lands. *Ibid.* and 11 *H. 4. 17. 19. 2 E. 3. 34. 44.*

A person that has goods bailed to him. *Stat. 21 H. 7. 14.*

The lord of a villein, for his villein's cattle taken. *Stat. 42 E. 3. 18. 9 H. 6. 26.*

But the lord in that case shall not recover damages for the taking, but only for the distraining.

An executor or administrator shall have this writ *de bonis testatoris*, and also an executor for goods taken in the testator's life. *Stat. 6 H. 7. 8. 21 H. 6.* and when brought on his own possession, he may have it before probate.

By *stat. Hen. 4. cap. 18.* If one takes and impounds the beasts of my tenant, and I take them out of the pound, and put in my own beasts, and gage for them, I may maintain this writ for my own beasts; and in that case the other shall not avoid it by saying, he took the beasts of my tenant.

A husband and wife may join in this writ for a distress taken on the wife's lands; but if for goods of the wife taken when *sole*, the husband alone shall bring this writ.

If the beasts of divers persons are taken, they cannot join in this writ, but each one must bring it *severally*; joint-tenants, or tenants in common may join in this writ, and if a person uninterested join with them, the writ shall abate. *Stat. 11 H. 6. cap. 31.*

An infant may bring this writ.

By *statutes 13 E. 4. 6. and 34 H. 6. 47.* if the lord distrain the tenant, the mesne may discharge the tenant, and put his own cattle in the pound in lieu of the tenant's, and thereupon bring a *replevin*.

This writ may be brought by a person whose cattle were not impounded, and of such cattle which were never taken or distrained.

### *Secondly, Against whom this writ may be brought.*

By *stat. 23. Hen. 7. cap. 1.* a *replevin* lies not against the King, nor where he is party, nor where the taking was in his right.

This writ lies not against him that hath goods delivered to keep; but it will lie against the lord that distrains wrongfully, though the goods come again to the owner, or against any other that takes or distrains goods or chattels wrongfully.

This writ lies against the sheriff in the common form.

If a person takes beasts by command of another, this writ may be brought against both, or it may be brought against the commander only, as well as an action of trespass.

If a distress be made in one county, and impounded in another, this writ may be brought in either.

This

This writ may be brought against the heir of a feme, tho' charged therein as heir of baron and feme.

If this writ is brought against the bailiff of baron and feme, he must aver her loss in his *avowry*.

This writ will not lie against the bailiff for goods taken on a *second distress*.

This writ may be tried by either the plaintiff or the defendant without provisor.

*Thirdly, For what things this writ may be brought.*

This writ may be brought for such things wherein a man has any kind of property, *viz.*

Of things wherein a man has only a qualified and absolute property: For example,

As of things that are wild, if made tame, for the property only remains while they continue tame.

Therefore it lies of a hawk reclaimed, or of a ferret, of a mastiff or greyhound, of a hive of bees, or of things whereof one has only a special property or possession.

By *stat. 21 Hen. 7. cap. 14.* This writ lies where goods are pledged or bailed to another to keep.

Or where cattle are taken that *agist*, or *manure*, or *compester land*, or where a heriot or mortuary is distrained after seizure.

By *stat. 18 Eliz.* this writ lies if a person distrains sheep which afterwards have lambs.

It lies of a cow and calf not calved, or a sow and pigs not farrowed when taken.

It also lies of any goods or chattels, as well as of live cattle: As for example,

It lies of any household goods, or implements of trade &c.

It lies of a barge, of yarn, or wool, of corn or grain in a waggon or cart.

By *stat. 2 W. & M. c. 5. sess. 1.* It lies of any sheaves or cocks of corn &c.

This writ lies of wood cut, or trees felled, being thereby severed from the land; and generally whatever is distrained may be replevied.

This writ lies not of deeds or charters concerning lands (except in a box).

Nor of trees or wood growing, nor of any thing annexed to the freehold, because such thing cannot be distrained.

If a person by deed, grant a rent with clause of distress, and that he shall keep the goods distrained, against all gages and pledges, until the rent be paid; yet the sheriff may replevy the goods distrained; for it is against the nature of a distress to be *irreplevisable*, and by such an invention the effect of this writ would be overthrown, to the prejudice of the subject.

*Fourthly, In what courts this writ may be brought.*

It may be brought either in the *King's Bench* or *Common Pleas* by writ.

It lies also in the *cinque ports* by writ.

By *stat. Marl. cap. 21.* it lies in the *county court* by *plaint*; but it must be brought before the court day.

This writ lies in a *court-baron* by *plaint*; but there it ought to be granted while the court is sitting.

Yet by custom it seems in a *court-baron* it may be made before the court-day.

And by custom, a hundred-court may hold pleas of *replevins* by *plaint*.

The bailiff of a hundred cannot grant *replevins* out of court.

And it is there *queried*, if a hundred-court can prescribe to hold a plea of *replevin*? for the *county court* itself could not do it at common law, and the statute which enables the *county court*, does not extend to hundred courts: and it was *adjudged*, that supposing they might grant them in court, yet they could not prescribe to grant them out of court.

The usage in *Northamptonshire* is, that in the absence of the sheriff's bailiff &c. the *frank-pledge* may make deliverance of *replevins*.

*Replevins* lie by patent in *London*.

A *replevin* lies not in the *Marshalsea* court.

A *procedendo* in *replevin* to the court of *Canterbury* has been denied, though no other remedy could be had for the rent charge avowed for.

*Note*, Process on the *stat. 17 Car. 2. cap. 7.* is void in inferior courts.

*Fifthly, Of process, pleas, and proceedings on this writ.*

The process in *replevin* is an *alias* and *pluries* writ of *replevin*.

If these writs are not returned, an attachment issues to the coroner against the sheriff.

On a return to this writ, that the bailiff of a franchise gave no answer, or that he will not make *deliverance*, there shall issue a *non omittas* directed to the sheriff.

By *stat. Marl.* if the bailiff of a liberty refuses to *replevy*, the sheriff may do it without a *non omittas*, and thereon may issue three *capias* and then a writ of *exigent*.

*Note*, The writ of *withernam* is deemed no writ of execution, but only a *mesne process*, yet this writ in some cases may be either *general* or *special*.



If I have beasts of another to manure my land, and a stranger takes them, I may have a general writ of *withernam*, without shewing the *specialty* of the case.

By *stat. 4 Hen. 4. cap. 17.* I may have a *special* writ, setting forth the *special* matter.

On a writ of *replevin* in the *detinet*, the plaintiff recovers both the value of the goods and damages for the taking; but when the writ and count are in the *detinuit*, it is supposed the plaintiff has his goods again, and therefore shall recover damages only for the taking.

So where the writ is *de averiis*, and the count is *de averiis & cattallis*, such declaration is ill.

Neither the writ or declaration need to mention the colour or value of the cattle, though the nature, kinds, and number, ought to be mentioned.

By *stat. 2. Hen. 6. cap. 14.* the declaration ought to shew the time and place of taking.

In your declaration, if you do not name the place where, as well as the vill, it is ill; for the taking at another time or place than declared on abates it.

It is a good plea for the defendant to say he took them in another vill or place.

The *Misnomer* of the vill or place is no plea in *replevin*.

If the declaration assign no place, yet the defendant in his *avowry* must, else he can have no return.

A declaration in *replevin* brought by bill, was held naught on a demurrer, because no *second deliverance* can go in such a case, if the plaintiff be nonsuited.

If the count in *replevin* is ill, and also the *avowry*, the plaintiff shall have no return.

Uncertainty in the count or *avowry* may be reduced to a certainty by the sheriff's inquiry on the writ of *retorno habendo*.

The defendant shall not plead a *misnomer* of the place, but may say he took it in another place.

Where he pleads *prisel in auter lieu*, he must make suggestion for a return.

*Non cul infra sex annos*, is no plea in this suit.

Tender of amends after taking, and before delivery of the cattle, is ill.

*Note*, The plaintiff in *replevin* cannot discontinue without leave of the court.

If the defendant pleads *prisel in auter lieu*, and avows for rent in arrear, if the plaintiff traverses the *avowry*, and the defendant demurs, it is a discontinuance of the suit.

## A V O W R I E S.

*Of the avowry or defence in replevin.**First,*

**A**N *avowry* is where one makes a distress for rent, or any other cause, and the owner of the thing seized sues out a writ of *replevin*; then he who took the distress may *justify* and *avow* the taking, or shew cause why he took it: For example, if he took it in his own right, he must shew it, and *avow* the taking; and if he took it in right of another, he must then make conuzance as bailiff of the person on whose behalf he made such distress,

On this writ the defendant may *avow* or *justify* at his election; but if he *justifies*, he shall not have a return, as he shall where he *avows*.

The *avowry* is in the nature of a *count* or *declaration* in any other action, and therefore ought to contain sufficient and certain matter, whereon judgment may be given to have a return.

If the *avowry*, *declaration*, or *replication*, is defective in form only, the plea of the opposite party may cure such imperfection, but cannot supply matter of substance or certainty.

The defendant on the writ of *replevin* need not *aver* his *avowry* with *and this he is ready to verify*, because the defendant in his *avowry* is the actor, for therein he shews his matter (or complaint of wrong done) which is a *count*, and prays to have a return; and therefore as plaintiff he shall not *aver* his *avowry* no more than the plaintiff shall *aver* his *count*.

As an *avowant* he shall not be obliged to alledge *seisin* within the time of the statute of limitations, 32 H. 8. cap. 2. but that must be shewn on the other side.

By stat. 23 H. 8. cap. 2. On an *avowry* for rent, *seisin* must be alledged within fifty years, before the making of the *avowry* or conuzance.

On an *avowry* on a tenure of *fealty*, *rent*, and *suit of court*, if the plaintiff confesses the tenure, but says, That neither the *avowant* nor his ancestors were seized of the services, or any of them, within fifty years, this is not good, because homage *fealty* &c. and such casual services may not happen within fifty years, and so out of the statute.

*Note*, By stat. 8 H. 6. 2 H. 6. *Seisin* of services by the hands of a tenant at will shall not bind the tenant, nor by the hands of lessees for years.

By stat. 8 H. 6. cap. 18. if a person makes a gift in tail, rendering rent, he may *avow* without *seisin*, because the deed and the reversion gives him a sufficient *privy* of estate.

An *avowry* was given by the statute for a relief on the tenure of *fealty*, *rent*, and *suit of court*, and good without mention being made of the relief, because it is parcel of the tenure of *common right* and if separated from it the same must be shewn on the other side.

By *stat. 23 H. 8. cap. 87.* if executors *avow* for arrears of rent in fee accrued to the testator, they must shew that the land continues in the seisin of the tenant, who ought to have paid it, or in the hands of some other who claims by or for him, according to the said *stat.*

*Note*; An *avowry* is not good in the right of one executor where there is another executor and he is not named.

One tenant in common cannot *avow* the taking of the cattle of a stranger *damage-feasant*, without making himself bailiff or servant to his co-tenant.

Tenants in common may join in debt for rent, &c. yet they cannot *avow* jointly, but must make several *avowries*.

If a person *avows* for *damage-feasant* in his common, but alleges no damage to himself, this is bad, because he cannot distrain a stranger's cattle without a particular damage.

On an *avowry* the defendant says, That the property is in a stranger, that is, that they were the plaintiff's, this is good either in *bar* or *abatement*, and the defendant need not *avow* for the return of the goods; for they not being the plaintiff's, the *avowant* is to have a return without it.

If on the writ of *replevin* the defendant *avows*, That he was possessed of a term still in being, and leased it to the plaintiff, this is naught; for though *he was possessed* be good in an action of debt for rent, yet it is not in *replevin*; for in *replevin* the defendant must set forth his title, and how he became possessed &c.

At *common law*, the lord might *avow* on his tenant for rents, services &c. after four several methods and manners.

1. On one as his *very tenant*, by reason of the tenure: For example, where the lord had a fee in the seignior, and the tenant had also a fee in the tenancy.

2. On one as his *very tenant by the manner*: For example, where such tenant made a lease for life, or a gift in tail, with remainder in fee; there the lord might *avow* upon such lessee, or donee, as on his *very tenant by the manner*, *stat. 20 H. 6.* but in such case the lord ought to shew this matter in his *avowry*. *Statutes 15 E. 4. and 4 H. 6.*

3. On one as his *tenant by the manner* omitting (*very*) as when the lord had only some particular estate in the seignior; as in tail, for life, or a less estate; and so when the tenant had a less estate than fee-simple and in this manner the donor shall *avow* on the donee, the lessor on the lessee for life, or years. *Statutes 21 H. 6. & 2. H. 4.*

On the *matter in the land*; as within his fee and seignior; as where a tenant by knights-service made a lease for life rendering rent, and died, his heir within age; the guardian in chivalry might *avow* on the lessee, *stat. 38 H. 6. cap. 23.*

By the *stat. 21 H. 8. cap. 19.* any lord may *avow* the taking of a distress within the tenancy, as in lands or tenements within his fee  
or



or feignory, without avowing upon any person in certain, yet he is at liberty still to *avow* as at *common law*.

*Secondly, What persons shall avow.*

By *stat. 15 H. 7.* the King having the profits of lands by *out-lawry* in any personal action (as well as real) may *avow*. 15 H. 7. 2. *pl. 4.*

The lord may *avow*, as before is shewn, either at *common law* or by the *statute*. 21 H. 8. *cap. 19.*

By *stat. 17 H. 7.* A guardian in *socage* may *avow* for *damage-feasant* in his own name, for he hath the governance of the land. *Cestuy que use* before *stat. 27 H. 8.* could not *avow* for *damage-feasant* in his own name, because at *common law* he had nothing in the land but only the occupation at the sufferance of the feoffees. *Statutes 15 H. 7. 2, 12, 13. & 17 H. 7. 41.*

Since that statute he may *avow* in his own name, &c. or he may justify in the name of the feoffees.

A *commoner* may *avow* for *damage-feasant* though he be but a copyholder, or tenant for years. *Statutes 17 H. 7. 41. and 15 H. 7. 8.*

A tenant at will may *avow* for *damage-feasant*. *Stat. 15 H. 7. 2.*

A tenant at sufferance cannot *avow* for *damage-feasant*. *Stat. 17 H. 7. 47.*

In *trespass* the party may justify *damage-feasant*, for he ought to have the profits till he that has right enter on him. *Stat. 4 H. 7.*

A parson may *avow* for a rent-charge by *prescription*.

An executor may *avow* for rent due in the life-time of his testator: 32 H. 8. *cap. 37*

Or if for rent reserved by the testator on a lease for years he shall not be put to shew the testament.

An administrator may *avow* for rent due in the life of the testator. *Stat. 38 H. 8.*

If a rent be granted by a husband and wife, and there are arrears incurred, and then the husband dies, the wife may distrain and *avow*, &c.

A husband in right of the wife may *avow* for rent service, or for rent due to the wife after *coverture*.

A person cannot make conuzance as bailiff to the husband and wife, because a *feme-covert* cannot make a bailiff.

*Thirdly, For what a person may avow.*

For homage, fealty, or other services, the lord might distrain and *avow*, &c. and so for the rent-service; but if he is to render one thing for another, he shall *avow* accordingly.

If a person *avows* for two rents where one rent-day is not come, the *avowry* shall abate only for that which is not come.

By *stat. 16 Hen. 7.* The *avowry* is not to be for the double rent, but only for the quantity of the single rent.

It may be for a relief, or a heriot-service, for they are in nature of rent-services.

So it may be, for a heriot-custum, or for a *fine* in a court-leet, because it may be distrained for.

It may be for forfeitures on divers *penal statutes*, as the *stat. 4 H. 7. cap. 8.* for a moiety of the value of the land; and the statute for maintenance of husbandry; and other statutes that give a distress; or for amerciaments in a court-leet, by *stat. 20 H. 7.* or in the sheriff's torn.

The same for amerciaments in a court-baron, where the distress is by custom, by *stat. 20 H. 7. 66.* And also for an amerciament for the tenant's not coming, they may distrain, if it be assessed by the affectors, otherwise not.

So for a *corrody* granted by deed with a clause of distress one may *avow*, otherwise not.

For *damage-feasant*, a person may *avow*; but if the cattle is chased out before he distrains, he cannot *avow* the distress.

An *avowry* may be for one thing, though the distress was for another. On an *avowry* for rent, where part thereof is not due, the same is error; but it may be cured before judgment by abating the *avowry* as to that part of the demand.

In *Hil. 12 W. 3.* in *B. R.* It was held, that on an *avowry* to a *replevin* there could not be a *proferit* of the money into court, because the *avowry* is to justify the taking of the cattle, and whether the money was paid or not, is not the question; but if the distress was rightfully taken, the *avowant* must have a return; but if wrongfully taken, he must answer the plaintiff his damages.

By the *stat. 17 Car. 2. c. 7.* "When a plaintiff is *nonsuit* before issue joined in any suit of *replevin*, removed or depending in any of the courts at *Westminster*, the defendant making suggestion in the nature of an *avowry* for rent, the court on his prayer shall award a writ to the sheriff to inquire of the sum in arrear, and the value of the distress; whereupon fifteen days notice shall be given to the plaintiff, or his attorney in court, of the sitting of such inquiry, and upon return of the inquisition the defendant shall recover the arrears, if the distress amounts to that value, or else the value of the distress with costs, and shall have execution thereupon, by *fi. fa. elegit*, or otherwise, as the law shall require.

"If such plaintiff be *nonsuit* after *avowry* and issue joined, or if the verdict be against him, the jury at the defendant's prayer may inquire, and the *avowants* recover &c.

"If judgment be upon demurrer for such *avowant*, the court at the defendant's prayer, shall award a writ to inquire the value of the distress, whereupon he shall have judgment &c.

"Where the distress shall not be found to be to the value of the arrears, the party may distrain for the residue.

By *statute 4 & 5 Ann.* for the amendment of the law, It is enacted, "That any defendant or tenant, in any action or suit, or any plaintiff in replevin, in any court of record, may, with leave of the same court, plead as many several matters thereto, as he shall think necessary for his defence.

By *stat. 11 Geo. 2. c. 19.* the defendant in replevin may avow or make conuizance generally, That the plaintiff in replevin, or other tenant of the lands &c. where the distress was made, enjoyed the same under a grant or demise, at such a certain rent, during the time wherein the rent distained for incurred, which rent was then and still remains due: Or, that the place where the distress was taken was parcel of such certain tenements held of such a manor, lordship &c. for which tenements the rent, relief &c. distrained for, was at the time of such distress, and still remains due, without setting forth the grant, tenure, demise, or title of the landlord &c. and if the plaintiff be nonsuit &c. the defendant is to have double costs.

*Note,* It frequently happens, that on landlords bringing an action on the case to recover a reasonable satisfaction for lands &c. occupied by the defendant, there appears in evidence on the trial some written agreement or parol demise, with a certain rent reserved, by which the plaintiff becomes nonsuit: for remedy whereof, by the *stat. 11 Geo. 2. c. 19.* It is enacted, That such demise or agreement may be made use of as an evidence of the quantum of the damages to be recovered.

See *statutes West. 2. c. 2. 7. H. 8. c. 4. 21 H. c. 19. 12 Car. c. 5. &c.* on this subject.

### Of pleas in replevin

THESE pleas are generally of four kinds; 1<sup>st</sup>. pleas in bar; 2<sup>dly</sup> in justification; 3<sup>dly</sup>. by way of conuizance; 4<sup>thly</sup>. by way of avowry.

#### First, In bar.

A claim of property may be pleaded either in bar or abatement.

By *stat. 31 Hen. 6. cap. 12.* and *26 Hen. 8. cap. 6.* property is a good plea in bar, and not the general issue.

Where the defendant pleads property, he need not make a suggestion for a writ of *retorno habendo*.

By *stat. 31 Hen. 6. cap. 12.* It is held, claim of property cannot be pleaded by way of avowry.

It is no bar to say, The plaintiff is possessed of the cattle

The plea of *non cepit* is a good plea in bar.

Where



Where one defendant pleads *non cepit*, yet the others may make *conuzance* or justify in his right.

In *replevin* of corn it has been held a good *bar* to say, it was his wife's, and that the plaintiff surrendered it to her.

*Secondly, In justification.*

When one cannot have the thing for which he distrains, he may *justify* but cannot *avow*.

If a person distrains for services, and the tenant dies, in an action of *replevin* brought by the executors, he may *justify* but not *avow*, because in that case he cannot have a return for the same thing.

If a person distrains for services, he may *justify* or *avow* at his election, because in all cases where one may *avow*, he may *justify*.

A person may *justify* for rent determined, but cannot *avow*.

By *stat. 4 Hen. 7. cap. 3.* a tenant at *sufferance* may *justify* a distress for *damage-feasant*.

*Thirdly, By way of conuzance.*

A plea of *conuzance* is properly a confession or acknowledgment of taking the distress, as bailiff or servant to another.

The plea of *conuzance* may be pleaded as bailiff or servant for *damage-feasant* in the freehold of his lord or master.

So it may for *damage-feasant* in land which his master had for a term of years.

On a plea of *conuzance* as bailiff to the parson of *D.* who claimed a rent by *prescription*, and a distress thereon, held good.

A defendant in *replevin* may *justify* or make *conuzance* as bailiff.

*Fourthly, By way of avowry.*

There are in general four kinds of pleas by *avowry*.

By the *statutes 4. & 5 Ann.* "Any tenant or defendant in any suit, or any plaintiff in *replevin* in any court of record, may with leave of the same court, plead as many several matters thereto as he shall think necessary for his defence."

If the defendant in *replevin* claim property in himself, he shall have return without *conuzance*, because his plea destroys the plaintiff's title; and if he lays property in a stranger, and make no *conuzance*, and if the plaintiff admits that property, there shall be a return without any *conuzance*; for by that admittance the plaintiff's property is destroyed: but in all pleas that do not shew the property out of the plaintiff, a *conuzance* must be made, and the plea only is to be answered, and not the *conuzance*.

*Of judgments in replevin.*

THE usual judgments in *replevin* are either 1. *Retorno habendo's*; 2. *Second deliverance*; or 3. *Returns irreplevisable*.

*Of costs and damages in replevin.*

At common law before the statute 7 H. 8. c. 4. the *avowant* was to defend his right at his own expence, and was not allowed any costs or damages, though he distrained for ever so just a cause, which occasioned many persons to replevy their goods so distrained, and prosecute the same merely for vexation.

To remedy which mischief in part, the foregoing statute was made, which enacts, "That where common recoveries are suffered of manors, lands, tenements, and advowsons, the recoverers, their heirs and assigns, may distrain for any rents, services, or customs, due and unpaid; and make avowry and justify the same, and have the like remedy thereon, as the recoverers might have had, though such recoverers were never seised thereof &c.

"And every *avowant* or bailiff in any *replegiari* or *second deliverance*, if their *avowry*, *conuzance*, or *justification* be found for them, or the plaintiff be otherwise barred, shall recover his damages and costs. *Vide stat. 19 H. 8. cap. 11.*

But because that act extended to persons only which held lands &c. by rent-services or customs, where such recoveries were suffered; therefore by stat. 21 H. 8. c. 19. it is enacted, "That in any *replegiari*, or *second deliverance* for any rents, customs, or services, or for *damage-feasant*, if the *avowry*, *conuzance*, or *justification*, be found for the defendant, or the plaintiff be *nonsuit*, or otherwise barred, the defendant shall recover such costs and damages as the plaintiff should have, had he recovered."

But that statute extends only to *avowries* &c. for rent &c. and there being many other actions within the same mischief, in 4 Jac. 1. another act was made, "in which that of 21 H. 8. c. 15. which gives costs to the defendant in *debt*, *trespass on the case*, *detinue*, and *account*, or any other actions whatsoever, wherein the plaintiff or defendant might have costs."

By reason of the general words in the foregoing statute, it was adjudged in the case of *Samuel and Hoder*, 2 Cro. 520. that the defendant in *replevin*, where he justified the taking for an *amerciament* in a *court-leet*, should have his costs, (not damages) though such *justification* is neither for rents, services, or customs, nor for any other particulars for which costs were given by any of the said statutes of H. 8. and are only implied in the general words of that of Jac. 1. which includes not only such actions wherein costs are given by particular statutes, but all other actions whatsoever.

In the same case in 2 Cro. 520. are two other cases cited to have been so adjudged on the like point, viz. *Easter 38 El. & 44 Eliz.* which being before the said statute 4 Jac. 1. could not be influenced thereby.

Costs has been given to a plaintiff in *replevin* on an *avowry* for rent.

The present doctrine is to give damages to the defendant in *replevin*, wherever the plaintiff is *non-suited*, or issue found against him, or he be otherwise barred on *conuzance*, *avowry*, or *justification*, either for rents, customs, or services, on the ground of stat. 7 H. 8. c. 4.

And the same for *damage-feasant* by the said stat. 21 H. 8. c. 19.

In *avowries* where part is found for the plaintiff and part for the defendant, it has been a doubt, whether the jury can give damage and costs to the plaintiff; for that the *avowant* being in nature of plaintiff, where some part of the issue is found for him, it shews he had a right to take some of the goods, though not all; therefore the plaintiff in *replevin* is not to have damages or costs.

It has been held on the general rule, (that all statutes which give costs are to be taken strictly) that the statute 3 H. 7. c. 10. is not to extend farther than the words thereof will bear; and therefore where a *replevin* was against three defendants, one whereof an infant, all appeared, and *avowed* by attorney, and judgment being against the plaintiff, he brings error for the infant's appearing by attorney. But because he might have pleaded this in *abatement* to the *avowry*, and did not, it was held well, and judgment affirmed; but the court would give no costs to the *avowant*, and said, that such statutes are a sort of *penal laws*, and the said statute 3 H. 7. mentions only *writs of error* brought by any defendant or tenant, which does not extend to *avowants*.

In *replevin* the defendant *avowed* as overseer of the poor for a distress for a poor's rate on stat. 43 El. c. 2. and at the trial the plaintiff was *non-suit*; and no damages being found, it was afterwards moved for a writ of *inquiry* to supply this omission, which was granted; because here if the jury had inquired, it had been an inquest of office on which no attain would have lain; and distinguished this case from 1 Sid. 389. of an *avowry* for a rent-charge, according to 17 Car. 2. c. 7. for there the writ of *inquiry* was well denied; for by that statute the same jury are to inquire both of the rent in arrear, and of the value of the cattle. But the statute 43 El. does not tie it up to the same jury.

By stat. 11 Geo. 2. c. 19. if the plaintiff in *replevin* upon distresses for rent, quit-rents, reliefs, heriots, and other services, shall become *non-suit*, discontinue, or have judgment against him, the defendant shall recover double costs.



*Cases of practice relating to replevins &c.*

ON an action of *replevin*, brought for taking goods, chattels, and beasts. The defendant in the action made *conusance* for taking the beasts; but this plea, not answering the whole of the plaintiff's charge was adjudged ill. *Vide Mod. Rep. vol. 4. page 402. Ibid. vol. 5. page 77.*

If on *oyer* of a deed the *avowant* has *avowed* otherwise than he ought, the other side may take advantage of it, though after a verdict, and so he may of any thing that makes the *avowry* abateable. *Vide Mod. Rep. vol. 5. page 29.*

If one *joint-tenant* makes a distress for the whole rent in arrear, and levies for the same, such taking is good, though he does not make *co-nuzance* as bailiff to the rest, because he is in law accountable to the rest. *Ibid. 150.*

The same certainty is not required in an *avowry* as in a *declaration*; for though an *avowry* is in some cases a *declaration*, yet it is not so in all; for the *avowant* is a defendant, and the law allows him more favour than a plaintiff in an action, who is to make out a title to a thing in demand, and therefore his declaration must be certain. *Ibid. 364.*

In *avowry* the damages are not given in respect of the rent for which the distress was made, but for the taking the cattle &c. *Ibid. 366.*

At common law a *replevin* was formerly made by writ of *justicies*, and not by *plaint*, which is a quicker remedy, given by stat. *Westm. 1. cap. 16.* At this day, if a sheriff could not make *replevin* in his county court but by writ, a custom for a steward of an hundred court to grant *replevins* out of court must be void, for the hundred court is a court derived out of the county court. *Ibid. 254.*

In *replevin*, if the *avowant* pleads a particular estate, without shewing who had the fee, and the commencement of such particular estate, such plea is bad; yet it is too late for the plaintiff to take exception thereto after a *nonsuit*. *Vide Mod. Rep. vol. 6. page 223.*

In *replevin*, if property be claimed, notwithstanding the party *replevies*, an action of *trespass* will lie, and the claim, on notice of property, shall be the sole matter in issue on such action. *Ibid. page 69.*

In an action of *trespass*, the claim of property is not allowed to be given in evidence to make the party a *trespasser*. *Ibid. 139, 140.*

In *replevin*, the defendant may plead *property in a stranger*, in bar of the action. *Ibid.* 81.

In an action of *replevin*, if the defendant would take advantage of a variance in the place where the taking is laid from that in which really it was, he must plead the same in *abatement*. *Ibid.* page 103.

There is a distinction between an *avowry* on a title, and a *connaissance* or *avowry* for *damage feasant*; for if one *avows* for rent, he must shew his tenure and title in particular; and in that case the defendant may traverse any part of what the plaintiff has set out; but to *avow* for *damage-feasant*, it is sufficient on the whole matter, that a title appears for him to distrain by, though not exactly agreeing with what he set out. *Ibid.* page 158.

In an *avowry*, though the particular day of the entry &c. is not set forth, the same has been held good. *Vide Mod. Rep. vol. 8. p. 53.*

In *ejectment*, the plaintiff must fully make out his title; but the same strictness is not required in an *avowry*. *Ibid.* 54.

In an *avowry*, if the lessors shew, that the lessee is a disseisor, yet the contract between them still remains, and is sufficient to maintain an action of *replevin*. *Ibid.* 55.

In an action of *replevin*, the bringing into court what is due for *damages* is no stay of proceedings. *Ibid.* page 379.

A *sci. fac.* against the pledges or bail in an action of *replevin* is in nature of a *declaration*, and amendable. *Ibid.* page 314.

In an action of *replevin*, a *possessory* right only, without *property*, is not sufficient to maintain such action. *Vide Mod. Rep. vol. 10. p. 25.*

In an action of *replevin*, the being bailiff to another is a matter traversable. *Vide Mod. Rep. vol. 11. page 112.*

In a suit in *replevin* on a *homine replegiando* brought, the party must plead immediately without *imparlance*. *Vide Mod. Rep. vol. 12. page 34.*

On a *homine replegiando* brought, if the party appears on the day of the return of the process, and pleads *non cepit*, a *superfedeas* shall go to the *withernam* without bail. *Ibid.* 36.

If an *avowry* is made only for part of the rent in arrear, it must be shewn how the remainder was satisfied. *Ibid.* 84.

In an action of *replevin*, whether a person was, or was not bailiff, is a matter traversable. *Ibid.* 96.

It is a doubtful matter, whether a *hundred court* can hold plea of *replevin*; but if so, it must be in court. *Ibid.* page 120.

In an action of *replevin*, pleading *property* in a stranger is a good plea in *bar* of the action. *Ibid.* page 122.

In an *avowry* to an action of *replevin*, whenever a title is made under a particular estate the commencement, and also its derivation must be stated in the pleadings. *Ibid.* page 191.

In an *avowry* as bailiff for rent in arrear, his being bailiff is not a matter traversable. *Ibid.* page 319.

In an action of *replevin*, the bringing money into court on a *tender* of rent is not necessary; for the money is not demanded by this action, but whether the distress be well taken. *Ibid.* page. 352.

The *writ of replevin*, and *alias* thereon, are not returnable, but the *pluries* must be returned. *Ibid.* page 397.

If the defendant in *replevin* enters an appearance before the writ of *elongat'* be returned, no writ of *withernam* shall issue, the *writ of withernam* being the proper process on the *elongat'* being returned. *Ibid.* page 425.

On the *writ of elongat'* being returned, if the party pleads *non cepit*, he need not put in bail; but if he pleads *non cepit* on the *writ of withernaw*, he must. *Ibid.*

The bail put in, must be in a certain sum, and in the nature of *gage deliverance*. *Ibid.* page 426.

The plea of *non cepit* may be pleaded on the return of the *writ of withernam*.

In an action in *replevin*, if the cattle be taken on the *writ of withernam* by way of execution, the plaintiff has a *property* in such cattle, but not where they are taken on *process* only. *Ibid.* page 428.

If the issue be against a person who is bail on a *writ of withernam*, he must be in execution. *Ibid.*

If against a person who appeared on the *writ of elongat'* returned, and pleaded *non cepit*, a *writ of withernam* shall issue. *Ibid.* page 429.



The advantage the party obtains by appearing and pleading to the writ of *withernam* is, all proceedings are stayed till the issue is determined. *Ibid.*

On a *pluries writ of replevin* there is a day given the party in court. *Ibid.* page 430.

If on this writ the plaintiff is demanded, and will not declare, he shall be nonsuited. *Ibid.* page 431.

Where a writ of *replevin* is against several defendants, the plaintiff must declare against those who appear, and continue his writ against those who do not. *Ibid.*

On removing a writ of *replevin* out of an inferior court by *certiorari*, into the K. B. the declaration drawn in the inferior court cannot be charged. *Ibid.* page 453.

Coparceners must join in the *avowry*. *Vide Raym.* vol. 1. page 64.

In an *avowry* for a rent-charge, all the particulars of the lands must be set forth in the *avowry*. *Ibid.* page 155.

An executor, avowing under stat. 32 Hen. 8. cap. 37. for rent in arrear, need not aver the land was in the service of the plaintiff, &c. when the arrears were incurred. *Ibid.* page 174.

On a judgment for the *avowant* for more rent than is due, if a writ of error is brought thereon, the judgment will be reversed for the whole. *Ibid.* page 256.

In an action of *replevin*, an *avowry* may be abated for what is not due, and judgment given for the residue. *Ibid.*

On an *avowry* for rent to be paid in money and hens, and more being charged than due, the *avowant* obtained leave to release the damages for the hens. *Ibid.* 317.

In *replevin*, tenants in common cannot join in the *avowry*. *Ibid.* 442.

On a distress made for one cause, it may be avowed for another. *Ibid.* 466.

In a suit in *replevin*, if the place of taking the cattle, &c. is traversed, and thereon found for the *avowant*, he shall have a return though the cause of taking is not found. *Ibid.* 504.

In *replevin*, if a defendant pleads property in a stranger in bar of the suit, yet he may have a return of the property. *Ibid.* 217.

The *stat. Marl.* does not extend to *hundred courts*, nor can the Lord of a *hundred court* prescribe to grant *replevins* on a plaint. *Ibid.* 219.

In *replevin*, a justification, that the defendant *took* and *impounded*, is ill without giving colour; but it is otherwise if it is said he *took* and *detained*. *Ibid.* 219.

As the sheriff cannot return, *that he did not take*, &c. an action will not lie against him for a false return on a writ of *elongat*. *Ibid.* 613.

The writ of *withernam* being held a *mesne* process is superseded by a plea of *he did not take*, &c.. *Ibid.* 614.

The *pluries writ* of *replevin* supercedes the sheriff's proceedings in the suit, but it is otherwise of the writ of *recordari*. *Ibid.* 617.

The court will stay the writ of *withernam* on a tender of the damages found. *Ibid.* 720.

In a suit in *replevin*, property in the defendant, or a stranger, ought to be pleaded in *bar*, and not in *abatement*. *Vide Raym. vol. 2. page 984.*

In *replevin*, if the defendant pleads property in a stranger, he shall not have a return awarded to him, but he may have a return where he pleads property in himself. *Ibid.* 1017.

In *replevin* the want of an *avermant* in the declaration, that the fact was committed, is fatal, and cannot be cured. *Vide Fitzgibbons, page 109.*

In an *avowry* the commencement of the particular estate must be shewn. *Strange, vol. 2. page 796.*

In an *avowry* for an *amerciament* in a court-leet, the *avowant* must aver that the plaintiff was guilty, but it is otherwise in *trespass*. *Ibid.* 847.

There can be no writ of *replevin* of goods taken on a conviction. *Ibid.* 484.

*Adjudged*, that where the plaintiff *avows* at a different place, in order to have a return of the things taken in *distress*, he must in pleading traverse the place set forth in the *count* or *declaration*, because his *avowry* is inconsistent with it; but where he does not insist on a return, he may

may plead *non cepit*, and prove the taking to be at another place. *Ibid.* 507.

On a writ of *retorno habendo* awarded, the party desiring to have the cattle or goods returned, must shew them to the sheriff for that purpose, and on neglect it will be a good return if the sheriff returns, that he did not. *Cases temp. Lord Hardwicke*, 121.

In an action of *debt*, on a replevin bond, conditioned to appear in the county court, and then and there prosecute the plaint with effect. If the plaint is removed into the *K. B.* and the party becomes *non-suited*, it has been held that by such removal the condition of such bond is broke. *Ibid.* 137.

By *stat. Westm. 2.* the sheriff on granting the writ of replevin is to take a bond for the return, and if on the writ of *retorno habendo* issuing, the sheriff returns the cattle, &c. to be *eloigned*, the *avowant* may have a writ to have all the cattle, &c. of the pledges, and if on such writ the sheriff returns a *nihil*, the *avowant* may have a *scire facias* to return him all the cattle, &c. taken out of the sheriff's cattle, &c. *Ibid.* 352.

If the plaintiff in replevin pursues the remedy given by *stat. 17 Car. 2.* he must abide by the same, and cannot afterwards resort to this remedy. *Ibid.*

In replevin a person cannot *avow* a joint distress for several rents, but must shew for which rent the distress was taken. *Ibid.* 245.

In replevin the omission of finding the arrears of rent due, and the value of the distress, pursuant to *stat. 17 Car. 2.* cannot be supplied by a writ of inquiry. *Ibid.* 296.

Replevin is not an action or plaint within *stat. 8 & 9 Will. 3. cap. 11.* so as to give a defendant costs. *Vide Bur. vol. 3. page 1284.*

Note, For further adjudications on this subject, see the cases in this work, under the head of Distress.

## Precedents in Replevin.

### Writ of replevin.

GEORGE the Third, &c. To the Sheriff &c. greeting: WE command you, that justly, and without delay, you cause to be replevied the cattle of B. which D. took and unjustly detains, as it is



said, and afterwards thereupon cause him justly to be removed, that we may hear no more clamour thereupon for want of justice, &c.

*Plaint in Replevin.*

*A. B.* complains against *C. D.* in a plea of taking and unjustly detaining his cattle against sureties and pledges, &c.

Pledges to prosecute,

{ *E. F.*  
and  
*G. H.*

**Declarations.**

*For taking a porringer.*

*Middlesex*, *J. T. R. W.* and *W. S.* were summoned to answer to *T.* to wit. *J. W.* in a plea, why they took a silver porringer of the said *T.* and unjustly detained it, against surety and pledges, until &c. And whereon the same *T.* by *J. L.* his attorney complains that the said *J. R.* and *W.* on the \_\_\_\_\_ day of \_\_\_\_\_, in now King of England, &c. in the *Charter-house*, in the county of *Middlesex* aforesaid, in a certain place there called the *Dwelling-house* of him the said *T.* took the said porringer of him the said *T.* and unjustly detained it, against surety and pledges, until &c. whereby the same *T.* says that he is prejudiced, and hath damage to the value of \_\_\_\_\_ pounds: And therefore he produces the suit &c.

*For taking a mare in the highway.*

*Northampton*, *J. B.* was summoned to answer to *S. C.* in a plea, why he to wit. *J.* took a mare of him the said *S.* and unjustly detained it, against surety and pledges, &c. And whereon the same *S.* by *W. L.* his attorney, complains, that the said *J.* on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the Lord *George* the Third, late King of England, &c. at *Hardington*, in the county aforesaid, in a certain place there called the *King's highway*, a mare of him the said *S.* took and unjustly detained it, against surety and pledges, until &c. whereby the same *S.* says that he is prejudiced, and hath damage to the value of \_\_\_\_\_ pounds; And therefore he produces the suit, &c.

*Declara-*

*For taking sundry goods.*

*Middlesex*, *R. H.* was summoned to answer to *R. H.* in a plea, why to wit. *R.* he took the goods and chattels of him the said *R. H.* and unjustly detained them, against surety and pledges, until &c. And whereon the same *R. H.* by *J. P.* his attorney complains, that the said *R. H.* on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the Lord *George the Third*, now King of *England*, &c. at parish of *St. Margaret, Westminster*, in the county aforesaid, in a certain place there called *Peter-street*, took the goods and chattels following, to wit, one jack, two spits, eighteen pewter plates, &c. (reciting several other particulars) of the said *R. H.* and unjustly detained them, against surety and pledges, until &c. whereby the same *R. H.* says that he is prejudiced, and hath damage to the value of \_\_\_\_\_ pounds: And thereupon he produces the suit, &c.

*For taking sundry cattle.*

*Gloucester*, *T. S. Esq;* *R. P. Esq;* and *R. B.* were summoned to answer to *N. L.* in plea, why they took the cattle of him the said *N.* and unjustly detained them, against surety and pledges, until &c. And whereon the same *N.* by *P. H.* his attorney, complains, that the said *T. R.* and *R.* on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the Lord *George the Third*, now King of *England*, &c. at the parish of *Old Sodbury*, in the county aforesaid, in a certain place there called the *Stub Riding*, took the cattle, to wit, two oxen, of him the said *N.* and unjustly detained them, against surety and pledges, until &c. whereby the same *N.* says that he is prejudiced, and hath damage to the value of \_\_\_\_\_ pounds: And thereupon he produces the suit, &c.

*For taking a cow.*

*Stafford*, *J. I.* and *J. H.* were summoned to answer to *J. F.* in a plea, why they took a cow of him the said *J.* and unjustly detained it, against surety and pledges, &c. And whereon the said *J.* by *J. L.* his attorney, complains, that the said *J.* and *J.* on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the Lord *George the Third*, now King of *England*, &c. at *Shenston*, in the county aforesaid, in a certain place there called *The Lane*, took the cow aforesaid of him the said *J.* and unjustly detained it, against surety and pledges, until &c. whereby the said *J.* says that he

he is prejudiced, and hath damage to the value of \_\_\_\_\_ pounds: And thereupon he produces the suit, &c.

*For taking sheep, &c.*

*Hertford;* **W** P. late of *Bushey*, in the county aforesaid, Knt. was to wit. **W**. summoned to answer to *S. T. Esq;* in a plea, why he took the cattle of him the said *S.* and unjustly detained them, against surety and pledges, &c. And whereon the same *S.* by *J. W.* his attorney, complains, that the said *W.* on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the Lord *George the Third*, now King of *England*, &c. at *Bushey*, in a certain place there called *Marryhill Ground*, the cattle of him the said *S.* to wit, thirty-six weather sheep, twelve ewe sheep, and eight lambs, took and unjustly detained them, against surety and pledges, until &c. whereby the same *S.* says that he is prejudiced, and hath damage to the value of \_\_\_\_\_ pounds: And therefore he produces the suit, &c.

## Avowries.

*For a distress for an amercement at a leet.*

**A**ND the said *T. S. R. P.* and *R. B.* by *T. E.* their attorney, come and defend the force and injury when, &c. and the said *T. S.* and *R. P.* well avow, and the said *R.* as bailiff of the said *T. S.* and *R. P.* well acknowledges the taking of the cattle aforesaid, in the said place where &c. and justly &c. because they say, that the same place, where the taking of the cattle aforesaid is supposed to be, doth contain, and at the said time, when the taking of those cattle is supposed to be, did contain in itself eighty acres of meadow, with the appurtenances, called *Stub Riding*, situate in the parish of *Old Sodbury*, and then, and from time immemorial, was, and is parcel of the manor and within the manor of *Old Sodbury*, in the county aforesaid, and within the jurisdiction of the court-leet and view of frankpledge within specified; and that long before the said time when &c. to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the said Lord the now King, and long before, the said *T. S. R. P.* and one *J. N.* late of *Deane*, in the county of *Bedford*, Esq; were jointly seized of and in the said manor of *Old Sodbury* aforesaid, with the appurtenances, situate within the parish of *Old Sodbury* aforesaid, in their demesne as of fee; and that at the said time when &c. the said *N. L.* was and yet is occupier of the said close called *Stub Riding*, and that the said *T. S. R. P.* and *J. N.* and all



all those whose estate the same *T. R.* and *J.* have in the same manor, with the appurtenances, from time immemorial have had, and been accustomed to have, within the manor aforesaid, a certain court of view of frank-pledge, and all things which to a court of view of frank-pledge belong, of all the inhabitants and residents within the manor aforesaid twice a year, to wit, once within a month next after the feast of *Easter*, and again within a month next after the feast of *St. Michael* the archangel, before their steward of that court for the time being, within that manor yearly to be held, as to the said manor, with the appurtenances belonging and appertaining: And the said *T. R.* and *R.* farther say, that before the said time when *Ec.* to wit, at a court of view of frank-pledge of the said *T. R.* and *J.* held at *Old Sodbury* aforesaid, within the manor aforesaid, within a month next after the feast of *Easter*, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the said Lord the now King of *England*, *Ec.* before *T. E.* being then steward of the said *T. S. R. P.* and *J. N.* of the court of view of frank-pledge, by the oath of twelve free and lawful men within the parish aforesaid resident and inhabiting, then and there to inquire and present those things which to the court-leet and view of frank-pledge aforesaid then belonged, then in the same court being charged and sworn; then and there in the same court it was presented, among other things, that the said *N. L.* the now plaintiff, then and for three months then last past being occupier of the said close called *The Stub Riding*, within the jurisdiction of that court, had not opened the King's highway, being within the precinct of the manor aforesaid, and within the precinct of the leet aforesaid, and the jurisdiction of the said court of view of frank-pledge, leading from the parish of *Yate*, in the county aforesaid, cross the said close called *The Stub Riding*, unto and into a certain common field called *Horwood Common*, within the precinct of the same manor, and within the precinct of the said leet, and the jurisdiction of the court of view of frank-pledge aforesaid, which before then there within the jurisdiction of the court-leet aforesaid, he had stopped up and straitened, and the same way so straitened and stopped up then and for the space of three months then last past had continued straitened and stopped up, to the common nuisance of the people of the said Lord the King, there by that way desiring to pass; whereupon the said *N. L.* the occupier of the said close called *The Stub Riding*, for the cause aforesaid, at and by the same court of view of frank-pledge then and there was amerced; which said amercement by assessorors then and there in the same court of view of frank-pledge, to wit, *N. W.* and *T. A.* assessorors in the same court, thereto then charged and sworn, then and there was duly assessored to 40s. and farther in the same court by the said then steward of the said court, and the jurors aforesaid, it was ordered, that the said *N. L.* being the occupier of the close aforesaid, should open and leave open the way aforesaid for the subjects of the Lord the now King, there after to travel and pass before the \_\_\_\_\_ day of \_\_\_\_\_, then next following, under the penalty of 4 l.

of lawful money of *Great-Britain*, to be forfeited to the lord in default thereof: And the same *T. S. R. P.* and *R. B.* farther say, that the said *N. L.* afterwards, to wit, the same day, year, and place last mentioned, had notice of the order aforesaid, and that he being as aforesaid the occupier of the close aforesaid called *The Stub Riding*, did not open the same way for the liege subjects of the said Lord the King, there to travel and pass at any time before the \_\_\_\_\_ day of \_\_\_\_\_, then next ensuing, according to the form of the order aforesaid, by reason whereof at another court of view of frankpledge of the said *T. S. R. P.* and *J. N.* held at *Old Sodbury* aforesaid, within the manor aforesaid, before the steward aforesaid, within one month next after the feast of *St. Michael*, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the said Lord the King aforesaid, by the oath of twelve other free and lawful men, being then in the same court last mentioned, lawfully sworn and charged to inquire and present in form aforesaid, it was in the same court presented, that the said *N. L.* the occupier of the close aforesaid, called *The Stub Riding*, had not opened the same way for the liege subjects of the Lord the now King, there to travel and pass, according to the form of the said order last mentioned in that behalf so as aforesaid, then before for that purpose made; and that by reason thereof the said *N. L.* the occupier of the said close called *The Stub Riding*, had forfeited to the same *T. S. R. P.* and *J. N.* the lords of the court aforesaid, and of the manor aforesaid, with the appurtenances, being then in form aforesaid seized, the said sum and penalty of the said 4*l.* of lawful money of *Great-Britain*: And the said *T. S. R. P.* and *R.* farther say, that afterwards and before the said time when *Ec.* to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the said Lord the now King, the said *J. N.* at *Old Sodbury* aforesaid, in the county aforesaid, died, whereby not only the said manor, with the appurtenances, came to the same *T. S.* and *R. P.* by right of survivorship, but the right of having the said amercement and penalty, accrued to them the said *T.* and *R.* And the same *T. S. R. P.* and *R.* farther say, that at the time of the several presentments and courts aforesaid, so as aforesaid held and made, the way aforesaid was stopped and straitened, and so continued, by the said *N. L.* the occupier of the close aforesaid, to the common nuisance of the subjects of the said Lord the King; and because the said sum and penalty of 4*l.* above-mentioned, at the said time when *Ec.* was in arrear and unpaid, although it was demanded of the said *N. L.* to wit, at *Old Sodbury* aforesaid, the same *T. S.* and *R. P.* in their own right well avow, and the said *R. B.* the bailiff of the said *T. S.* and *R. P.* and by their command, well acknowledges the taking of the cattle aforesaid, then being the cattle of the said *N. L.* at the said time when *Ec.* in the said place where *Ec.* for the said penalty of 4*l.* being in form aforesaid due and in arrear, and justly *Ec.*

*For damage-Feasant, an avowry and cognizance, and also a plea in bar thereto.*

AND the said *W.* by *R. B.* his attorney comes and defends the force and injury when, &c. and the same *W.* in his own proper right well avows, and as bailiff to *A.* well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says, that the same place, in which the taking of the cattle aforesaid is supposed to be, contains, and at the said time, when the cattle aforesaid is supposed to be, *did* contain in itself two acres of pasture with the appurtenances in *B.* aforesaid; which said two acres of pasture with the appurtenances are, and at the said time when, &c. were, the soil and freehold of them the said *W.* and *A.* and because the cattle aforesaid at the said time when, &c. were in the said two acres of pasture eating up the grass in the same then growing, and doing damage there, the same *W.* in his own proper right well avows, and as bailiff to the said *A.* well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.

*Bar.*

And the said *S.* says, that the said *W.* for the reason before alledged, the taking of the cattle aforesaid in the said place in which, &c. ought not in his own proper right to avow, and as bailiff of the said *A.* to acknowledge just, because he says, that the said two acres of pasture in which, &c. are, and at the said time when, &c. and also from time immemorial were, parcel of the manor of *B.* and customary land of the same manor, and demised and demiseable by copy of court-roll of that manor, by the lord or lords of the same manor, or by their steward of the court of that manor for the time being, to any person or persons willing to take them in fee-simple, or otherwise, at the will of the lord or lords, according to the custom of the manor aforesaid; and the same *S.* farther says, that the said *A.* and *W.* before the said time when, &c. to wit, on the ——— day of ———, in the ——— year of the reign of the said Lord the now King aforesaid, were lawfully lords of the manor aforesaid; and the said *A.* and *W.* being then lords of the manor aforesaid, the same *A.* and *W.* afterwards and before the said time when, &c. to wit, on the same ——— day of ———, in the ——— year aforesaid, at a court of them the said *A.* and *W.* of their manor aforesaid, then held for that manor within the manor at *B.* aforesaid in the county of *H.* by one *T. S.* Gent. then their steward of the court of their manor aforesaid, by copy of court-roll of that manor granted the said two acres of pasture, with the appurtenances in which, &c. among other things, to the said *S.* *To have and*



to hold to the same S. his heirs and assigns for ever, at the will of the lords, according to the custom of the manor aforesaid; and the same S. according to the custom of the manor aforesaid, then and there was admitted tenant thereof: By virtue of which said grant and admission, the same S. before the said time when, &c. into the said two acres of pasture with the appurtenance in which, &c. among other things, entred, and was and yet is thereof seised in his *demesne* as of fee, at the will of the lords, according to the custom of the manor aforesaid; and he the said S. being so thereof seised, the same S. before the said time when, &c. put his cattle aforesaid into the said two acres of pasture in which, &c. to feed on the grass there then growing, and those cattle were in the said two acres of pasture in which, &c. feeding on the grass there then growing, until the said W. P. on the said \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year aforesaid, at B. aforesaid, in the said two acres of pasture called *Maryhill Grounds*, in which, &c. took the same cattle of the said S. and unjustly detained them, against surety and pledges, until, &c. as the same S. above against him complains: And this he is ready to verify: Wherefore for that the said W. P. the taking of the cattle aforesaid hath above confessed, the same S. prays judgment, and his damages by reason of the taking and unjust detention of those cattle, to be adjudged to him, &c.

*For damage-feasant in his freehold, with a plea in bar.*

AND the said F. by A. I. his attorney comes and defends the force and injury when, &c. and well avows the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says that the same place in which, &c. is known, and at the said time when, &c. and long before was known, as well by the name of *Hannam's Common*, as by the name of *Hannam's Heath*, and contains, and at the said time when, &c. contained in itself 50 acres of pasture with the appurtenances in the said parish of B. in the said county of G. which said 50 acres of pasture with the appurtenances are, and at the said time when, &c. were the soil and freehold of him the said F. and because the cattle aforesaid at the said time when, &c. were in the said place in which, &c. eating up the grass there then growing, and doing damage there, the same F. in his own proper right well avows the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there: And this he is ready to verify: Wherefore he prays judgment, and a return of the cattle aforesaid, together with his damages, costs and charges, in this behalf sustained, according to the form of statute in such case lately made and provided, to be adjudged to him, &c.

Bar.

And the said *J. L.* says, that the said *F.* for the reason before alledged, the taking of the cattle aforesaid in the said place in which, *Ec.* ought not to avow just, because by protesting at the same place in which, *Ec.* at the said time when, *Ec.* was not the freehold of him the said *F.* as is above supposed, for plea the same *J.* says, that long before the said time of the taking of the cattle aforesaid in the said place in which, *Ec.* to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of our Lord the now King *Ec. T. N.* was seised in his *demesne* as of fee of and in one messuage and 47 acres and a half of land being arable, meadow and pasture, with the appurtenances in *Hannam* and *Bitton* in the parish of *B.* aforesaid; and being so thereof seised, afterwards, to wit, on the said \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of our Lord the now King aforesaid, at *B.* aforesaid in the county aforesaid, demised the messuage aforesaid and the said 47 acres and a half of land being arable, meadow and pasture, with the appurtenances, to *W. L.* and *K.* his wife, and him the said *J. L.* To hold to the said *W. L.* and *K.* his wife for and during the term of their natural lives, and the natural life of the longer liver of them, and after their decease the remainder thereof to the said *J. L.* for and during the term of the natural life of him the said *J.* by virtue of which said demise the same *W.* and *K.* afterwards of the said messuage and the said 47 acres and a half of land being arable, meadow, and pasture, with the appurtenances, were seised in their *demesne* as of freehold for the term of their lives and the life of the longer liver of them, the remainder thereof after their decease to the said *J.* for the term of his life so as aforesaid belonging; and the said *W.* and *K.* being so thereof seised afterwards, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our Lord the now King, *Ec.* at *Bitton* aforesaid in the county aforesaid died thereof seised; after the death of which said *W.* and *K.* he the said *J.* as in his remainder aforesaid, afterwards, to wit, on the said \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our Lord the now King, *Ec.* at *Bitton* aforesaid in the county of aforesaid into the messuage aforesaid and the said 47 acres and a half of land being arable, meadow and pasture, with the appurtenances, by virtue of the demise aforesaid entred, and was and is yet thereof seised in his *demesne* as of freehold for the term of his life. And the same *J.* farther says, that at the time of the demise aforesaid made, he the said *T. N.* and all those whose estate the same *T.* then had of and in the said messuage and 47 acres and a half of land being arable, meadow and pasture, with the appurtenances have had, and for time out of mind have been accustomed to have, for themselves, their farmers and tenants, of the said messuage and the said 47 acres and a half of land being arable,

meadow and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid with the appurtenances *levant* and *couchant* every year at all times of the year, as to their tenements aforesaid belonging and appertaining: By reason whereof the said J. before the said time when, &c. to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ reign of the said Lord the now King, the cattle aforesaid in the declaration aforesaid above specified, being then the proper cattle of him the said J. upon the said 47 acres and a half of land being arable, meadow and pasture, with the appurtenances, then *levant* and *couchant*, into the said common called *Hannam's Common*, being the place in which, &c. put, as he well might, to use his common aforesaid; and the said F. the said cattle, to wit, the said 30 sheep so in the said place in which, &c. put feeding on the grass there growing, and using the common of pasture of him the said J. there, afterwards at the said time when, &c. to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year aforesaid, at *Bitton* aforesaid in the said place in which, &c. commonly called *Hannam's Common*, took and them unjustly detained, against surety and pledges, in manner and form as the said J. above against him complains: And this the same J. is ready to verify: Wherefore he prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

*An avowry for damage-feasant in the defendant's freehold.*

AND the said C. by R. B. his attorney, comes and defends the force and injury when, &c. and well avows the taking of the said cattle in the said place where, &c. to be just, because he saith, that the said place doth, and at the said time when, &c. did contain in itself ten acres, of land with the appurtenances which ten acres of land with the appurtenances are, and at the time of taking the cattle aforesaid were the soil and freehold of the said C. and because the cattle aforesaid, at the said time when, &c. were in the said place, where feeding upon the grass there growing, and doing damage there, the said C. well avows the taking of the cattle aforesaid in the said place where, &c. and justly, &c. for the damage there so done as aforesaid,

*Replication, &c.*

And the said (*plaintiff*) saith, That the said C. ought not to avow the taking of the cattle aforesaid in the said place where, &c. to be just, because he saith, That the said ten acres with the appurtenances are, and at the said time when, &c. were the soil and freehold of the said (*plaintiff*) and not the soil and freehold of the said C. as the said C. hath above alledged; and this he prays may be inquired of by the country; and said C. does likewise the same.

*Plea*



*Plea in bar to an avowry, that the plaintiff tendered to the defendant sufficient amends for the damage-feasant.*

AND the said *A.* pleads, That the said *C.* by reason of any thing above alledged, ought not to avow the taking of the cattle and chattels aforesaid in the said place wherein, &c. to be just, (or ought not to justify) because he saith, That after the said *C.* had taken the cattle and chattels in the place aforesaid, (to wit, [on such a day and year] at *W.* aforesaid, he the *A.* tendered to the said *C.* 6*s.* 8*d.* which were sufficient amends for the damages done to him in the said place wherein, &c. which 6*s.* 8*d.* the said *C.* then and there totally refused to accept, and unjustly detained the cattle and chattels aforesaid, against sureties and pledges, &c. until, &c. as he the said *A.* doth above complain against him; and this he is ready to verify; wherefore, in as much as the said *C.* doth above acknowledge the taking of the said cattle and chattels in the said place wherein, &c. he the said *A.* prays judgment and his damages, occasioned by the taking and unjustly detaining of the cattle and chattels aforesaid, to be adjudged to him, &c.

*Protestation and plea.*

And the said *C.* protesting, that the 6*s.* 8*d.* were not sufficient amends for the damages aforesaid done to the said *C.* in the said place where, &c. for plea saith, That the said *A.* did not tender to the said *C.* the said 6*s.* 8*d.* for the damage done in the said place where, &c. as the said *A.* hath above alledged; and this he is ready to verify; wherefore he prays judgment, and a return of the cattle and chattels aforesaid, to be adjudged to him, &c.

*Rejoinder.*

And the said *A.* as before saith, That he did tender to the said *C.* the said 6*s.* 8*d.* for the said damages done him in the said place where, &c. as he hath above alledged; and this he prays may be inquired of by the country.

*An avowry, where the defendant traverses the place, &c.*

AND the said *H.* by *J. T.* his attorney comes and defends the force and injury when, &c. and pleads, That in the said county of *D.* there is a place called *M. D.* and another place called *M.* in *E.* and another place called *M. J.* in *E.* aforesaid; without that, that in the said vill of *K.* there is or at the said time when, &c. was any

any place called or known by the name of *M.* only, and that he at the said time when the said cattle is supposed to have been taken, took the said *six* oxen and *eight* cows above specified in the said declaration, and also an horse of the said (*plaintiff*) in the said place called *M. D.* without that, that he took the said *six* oxen and *eight* cows at *K.* aforesaid, in the said place called *M.* only; as the said (*plaintiff*) doth above suppose by his said declaration, of all and singular which cattle aforesaid, one *P. E. Esq;* then sheriff of the said county of *D.* granted a replevin to the said (*plaintiff*) upon his plaint thereon; and this he is ready to verify; wherefore he prays judgment of the declaration aforesaid, and to have a return of all and singular the cattle aforesaid; and the said (*defendant*) as bailiff to *J. B.* well acknowledges the taking of the said *six* oxen, and *eight* cows, and one horse, in the said place called *M. D.* and justly, &c. because he saith, &c.

*Plea of property in a stranger, and for a return make cognizance as bailiffs to A. and B. for damage-feasant in their freehold.*

AND the said *E.* and *S.* by *W. L.* their attorney come and defend the force and injury when, &c. and say, that at the time when the taking of the cattle aforesaid is supposed to be, the property of those cattle was in one *S. H.* who is now surviving and in full life, to wit, at *H.* aforesaid in the county aforesaid; without that, that the property of the cattle aforesaid at the time of the taking of them was in the said *J. M.* as he by his writ and declaration aforesaid above supposes: And this they are ready to verify: Wherefore they pray judgment of the writ and declaration aforesaid, and a return of the cattle aforesaid, to be adjudged to them, &c. And to have a return of the cattle aforesaid, the same *E.* and *S.* as bailiffs of *A. B.* and *C. D.* well acknowledge the taking of the cattle aforesaid, in the said place where, &c. called *H.* and justly, &c. because they say, that the same place called *H.* contains, and at the said time when the taking of the cattle aforesaid is supposed to be, did contain in itself 40 acres of pasture with the appurtenances in *K.* in the county aforesaid; which said 40 acres of pasture with the appurtenances are and at the said time when, &c. were the soil and freehold of the said *A. B.* and *C. B.* And because the cattle aforesaid at the said time when, &c. were in the said place called *H.* aforesaid, eating up the grass there then growing, and doing damage there, the same *E.* and *S.* as bailiffs of the said *A. B.* and *C. B.* well acknowledge the taking of the cattle aforesaid in the said place where, &c. and justly, &c. so doing damage there: Wherefore they pray judgment, and a return of the cattle aforesaid, to be adjudged to them, &c.

*Plea of property as to part, and non cepit as to the residue.*

**A**ND the said R. by R. B. his attorney, comes and defends the force and injury when, &c. and as to the taking of ten sacks of flour, part of the goods and chattels aforesaid, he the said R. saith, That the property of those goods and chattels at the said time when, &c. were in the said R. and not in the said T. as it is above supposed by the writ aforesaid; and this he is ready to verify; whereupon, as to the taking and detaining of those goods and chattels, the said R. prays judgment of the writ aforesaid, and that it may be quashed, &c. And as to the taking of the residue of the goods and chattels aforesaid, he said R. pleads, that he did not take those goods and chattels, the said residue, as the said T. doth above complain against him; and thereof he puts himself upon the country; and the said T. does likewise the same, &c.

*Plea of cognizance as bailiff for a rent-charge.*

**A**ND the said W. by H. S. his attorney comes and defends the force and injury when, &c. and as bailiff of M. G. well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. because he says, That the same place, in which the taking of those cattle is supposed to be, contains, and at the said time when the taking of those cattle is supposed to be, did contain in itself 40 acres of land with the appurtenances in L. aforesaid, and that long before the said time when, &c. the said F. was seised of the said 40 acres of land with the appurtenances, whereof the place where, &c. is parcel, in his *demesne* as of fee, and the said 40 acres of land held of the said M. as of his manor of B. in the county of S. aforesaid, by fealty, suit of court, and the rent of 12 s. 6 d. every year, at the feast of St. Michael yearly to be paid; of which services the said M. was seised by the hands by the said F. as by the hands of his very tenant, to wit, of the fealty and suit of court, and of the rent aforesaid in his *demesne* as of fee; and because 5 l. 12 s. 6 d. of the rent aforesaid, for nine years ended at the feast of St. Michael in the ——— year of the reign of the said Lord the now King, to the same M. at the said time when, &c. were in arrear and not paid, the same W. as bailiff of the said M. well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. for the same 5 l. 12 s. 6 d. so in form aforesaid being in arrear, as in parcel of the said land of the said M. in form aforesaid held, and within the fee, &c. And this he is ready to verify: Wherefore he prays judgment, and a return of the cattle aforesaid, to be adjudged to him, &c.



*A plea in Bar, &c.*

**A**ND the said *R. P.* pleads, that the said *T. L.* ought not to avow the taking of the cattle aforesaid in the said place which, &c. to be just, for the reason above alledged, nor ought they the said *A. W.* and *T. L.* as bailiffs to the said *T. L.* to acknowledge the said taking of the cattle aforesaid in the said place in which, &c. to be just, for the same reason, because he saith, That he the said *R. P.* at the said time when, &c. was, and long before had been possessed of and in a close of pasture in *B.* aforesaid, near adjoining to the said place called *P.* in which, &c. and further, the said *R. P.* saith, That the said *T. L.* and all those whose estate he the said *T. L.* now hath, and at the said time when, &c. had, of and in the close aforesaid called *P.* in which, &c. for so long a time as there is no remembrance of any man to the contrary, have made and repaired, and have been used and accustomed to make and repair the hedges and fences between the said close called *Parks*, in which, &c. and the said close of pasture of the said *R.* and the said *R.* further saith, That before and at the time when, &c. the hedges and fences between the said close in which, &c. and the said close of pasture of the said *R. P.* were broken, laid open, and in great decay for want of repairing them, by which means the cattle of the said *R.* being thentofore put into his said closes of pasture, afterwards, and before the said time when, &c. that is to say, upon the ——— day of ———, in the ——— year aforesaid, escaped out of the close of the said *R.* and by the hedges and fences aforesaid being broken, entred into the said close in which, &c. and there remained until they the said *T. L. A. W.* and *T.* afterwards and before that the said *R.* had or could have any notice of the said cattle's being in the said place in which, &c. (to wit) at the said time when, &c. took the said cattle in the said place in which, &c. and unjustly detained them against sureties and pledges, in the manner and form as the said *R.* doth above complain thereof against them; and this he is ready to verify; wherefore, and in as much as the said *T. A. W.* and *J.* do above acknowledge the taking and detaining of the cattle aforesaid, he the said *R. P.* prays judgment, occasioned by the taking and unjustly detaining of the cattle aforesaid, to be adjudged to him, &c.

*Plea of cognizance for a distress for a fine incurred at a court-leet.*

**A**ND the said *J.* and *J. H.* by *T. C.* their attorney come and defend the force and injury when, &c. and as bailiffs of *R. F.* Esq; well acknowledge the taking of the cow aforesaid in the said place in which, &c. and justly, &c. because they say, that the same place

place in which the taking of the *cow* aforesaid is supposed to be contained, and at the said time when the taking of the *cow* aforesaid is supposed to be, contained in itself an acre of land with the appurtenances in *S.* aforesaid; which said town of *S.* is, and at the said time when, &c. and also from time out of mind was, within the manor of *S.* with the appurtenances in the county aforesaid; of which said manor with the appurtenances the said *R.* is, and at the said time when, &c. and long before was, seised in his *demesne* as of fee; and the said *R.* and all those whose estate he hath in the same manor with the appurtenances, for time out of mind have had, and been accustomed to have, a *court-leet* or *view of frankpledge* of the same manor, and whatever to *view of frankpledge* belongs, of all the inhabitants and *resiants* of that manor, before the steward of the same court for the time being, every year within a month next after the feast of *St. Michael the archangel*, at that manor yearly to be held, as to the same manor with the appurtenances belonging: And the same *J.* and *J.* farther say, That within the manor aforesaid there is, and from time out of mind hath been, such custom, that the jurors to inquire and present those things, which to that *court-leet* and *view of frankpledge* belong, charged and sworn; at the court of *view of frankpledge* of the manor aforesaid, held at that manor within a month next after the feast of *St. Michael the archangel*, yearly have chosen, and for all the time aforesaid have been accustomed to choose a proper man from the inhabitants within the manor aforesaid to be constable of the constablewick of *S.* aforesaid, to serve for one year in that office; which said man so elected hath taken upon himself, and for all the time abovesaid hath been used and accustomed to take upon himself that office, and hath taken and been accustomed to take an oath for the due execution of that office, under a reasonable penalty, for all the time abovesaid, by the jurors aforesaid at such *court-leet* and *view of frankpledge* in that behalf set: And the same *J.* and *J.* farther say, that the said *R.* being lord of the manor aforesaid, and of the same in form aforesaid seised, at a *court-leet* of *view of frankpledge* of that manor, held at that manor within a month next after the feast of *St. Michael the archangel*, to wit, on the ——— day of ———, in the ——— year of the reign of our Lord the now King, &c. before *H. F. Gent.* then steward to the said *R.* of that court, the said *J. F.* then and long before, being an inhabitant within the manor aforesaid at *S.* aforesaid, and a proper man to be constable of the said constablewick of *S.* aforesaid, by *E. T. T. G. J. C. J. A. J. H. W. M. W. R. N. W. T. S. J. M. J. S. J. A.* and *J. D.* good and lawful men, and inhabiting within the manor aforesaid, and then and there in the same court charged and sworn to inquire and present those things which to that *court-leet* and *view of frankpledge* belonged, duly and according to the custom aforesaid was chosen to be constable of the constablewick of *S.* aforesaid for one year then next ensuing to serve in that office; and those jurors then and there in the same court ordered, that the said *J.* should take his oath for the due execution of his office aforesaid, under the penalty of forfeit-

ing 40 s. whereof the said J. F. immediately afterwards, to wit, the same day and year there had notice: *Nevertheless* the said J. hath not taken his oath for the due execution of the office of constable aforesaid, nor hath executed or taken upon himself that office, but to do it then and often afterwards there absolutely refused; wherefore afterwards and before the said time when, &c. to wit, at a *court-leet* or *view of frankpledge* of the said manor of the said R. held at that manor within a month next after the feast of St. Michael the archangel, to wit, on the ——— day of ———, in the ——— year of the reign of the said Lord the now King, &c. before H. F. then steward to the said R. of that court, by E. T. J. C. W. P. T. G. J. P. J. J. E. H. J. S. J. M. W. M. G. H. J. S. the younger, and J. A. good and lawful men then inhabiting within the manor aforesaid, then and there in the same court sworn and charged to inquire and present those things which to that *court-leet* or *view of frankpledge* belonged, it was presented that the said J. F. because he was duly elected to be constable of the constablewick of S. aforesaid at the last *leet* held for the manor aforesaid, and under the penalty of 40 s. on him set, was ordered to take upon himself that office, and execute it, and take his oath in form aforesaid for the due execution of that office; which, or any part whereof, he had not done, wherefore he had forfeited to the lord of the manor aforesaid, the said 40 s. of the penalty aforesaid, then to be paid to the lord of the manor aforesaid, as by the record thereof in the custody of the said steward of the court of the manor of him the said R. at that manor remaining more fully appears: And because the said 40 s. for that penalty to the same R. so as aforesaid being lord of the manor aforesaid, at the said time when, &c. were in arrear and unpaid, the same J. and J. H. as bailiffs of him the said R. well acknowledge the taking of the *court* aforesaid in the said place in which, &c. and justly, &c. for the same 40 s. for the penalty or amercement aforesaid to the said R. so being in arrear and unpaid, and within the manor aforesaid, &c.

*Plea of cognizance by overseers for a poor's rate.*

AND the said J. R. and W. by R. H. their attorney come and defend the force and injury when, &c. and well acknowledge the taking of the *porringer* aforesaid in the said place in which, &c. and justly, &c. because they say, that at the said time when, &c. the same J. and R. being overseers of the poor of the parish of St. Sepulchre in the county of Middlesex, by virtue of a certain warrant under the hands and seals of W. W. Esq; and T. S. Esq; then two of the justices of the Lord the now King, assigned to preserve the peace in the county aforesaid (one being of the *quorum*) to the warden of the church and the overseers of the poor of the same parish, or any of them, directed, at the said place in which, &c. demanded of the said T. W. to pay them 10 s. 6 d. of lawful money, &c. upon him duly assessed towards the relief of the poor of the parish aforesaid, by the authority



rity and according to the tenor, purport and effect, of a certain statute made and provided in a parliament of the Lady *Elizabeth*, late Queen of *England*, &c. held at *Westminster* in the county of *Middlesex* in the 43d year of her reign; and because the said *T.* then and there refused to pay the said 10s. 6d. to them the said *J.* and *R.* they the same *J.* and *R.* as overseers of the poor aforesaid, and the said *W.* at their request and in their aid, for the preservation of the peace of the said Lord the King, (the said *W.* being then a constable within the parish aforesaid) by virtue of the statute and warrant aforesaid well acknowledge the taking of the *porringer* aforesaid, the said time when, &c. in the said place in which, &c. in the name of a distress for the said 10s. 6d. upon him the said *T. W.* as aforesaid assessed towards the relief of the poor of the parish aforesaid; then being in arrear and unpaid, and justly, &c. And this they are ready to verify: Wherefore they pray judgment, and a return of the *porringer* aforesaid, to be adjudged to them, &c.

*Plea of cognisance for damage feasant, with a plea in maintenance of the declaration.*

AND the said *J. B.* by *J. B.* his attorney comes and defends the force and injury when, &c. and as bailiff to *W. Lord L.* well acknowledges the taking of the *mare* aforesaid the said time when, &c. in a certain place called the *Queen's highway*, and justly, &c. because he says, that the said place contains, and the said time when, &c. did contain in itself, half a rod of land with the appurtenances in *H.* aforesaid; which said half rod of land long before, and the said time when, &c. was parcel of a certain antient messuage in *H.* aforesaid; which said messuage long before, and the said time when, &c. was the soil and freehold of the said Lord *L.* and because the *mare* aforesaid the said time when, &c. was in the said half rod of land in which, &c. doing damage there, the said *J.* as bailiff to the said *W. Lord L.* well acknowledges the taking of the *mare* aforesaid in the place in which, &c. and justly, &c. doing damage there, &c. without that, that the said *J.* took the *mare* aforesaid in a certain place called the *King's highway*, as the said *S.* against him hath declared: And this he is ready to verify: Wherefore he prays judgment, and a return of the *mare* aforesaid, to be adjudged to him, &c.

*Plea in Maintenance of the Declaration.*

And the said *S.* says, that the said *J. B.* as bailiff to *W. Lord L.* the taking of the *mare* aforesaid ought not to acknowledge just, because he says, that he the said *J. B.* the said time when, &c. took the *mare* aforesaid

aforesaid in the said place then called the *King's highway*, in manner and form as the said *S.* above by declaring hath alledged : And this he prays may be inquired of by the country.

*An avowry for taking household goods, &c.*

AND the said *R. H.* by *J. L.* his attorney comes and defends the force and injury when, &c. and well avows the taking of the goods and chattels aforesaid in the said place where, &c. and justly, &c. because he says, that the same place, where the taking of the goods and chattels aforesaid is supposed to be, contains, and at the same time when the taking of those goods and chattels is supposed to be, did contain in itself, a certain piece or parcel of land with the appurtenances in a place called *Peter-street*, otherwise *Bowling Alley*, in the parish of *St. Margaret Westminster* aforesaid in the county aforesaid ; of which said piece or parcel of land with the appurtenances one *R. M.* before the said time when, &c. was seized in his *demesne* as of *fee* ; and being so thereof seized, the said *R.* before the said time when, &c. to wit, on the — day of — in the — year of the reign of our Lord the now King, at the parish of *St. Margaret Westminster* aforesaid, in the county aforesaid, demised the same piece or parcel of land with the appurtenances to the said *R. H.* To hold to the same *R.* and his assigns from the feast of the Blessed Virgin *Mary* then last past before the date of the same demise, for the term of — years from thence next ensuing and fully to be compleat and ended : By virtue of which said demise the said *R. H.* was possessed of the same piece or parcel of land for the term aforesaid ; and so being thereof possessed, the same *R. H.* afterwards and before the said time when, &c. had erected and built the said messuage or tenement on the piece or parcel of land aforesaid, and was thereof possessed ; and being so thereof possessed, he the said *R. H.* before the said time when, &c. to wit, on the — day of — in the — year of the reign of the lord the now King abovesaid, demised the messuage aforesaid with the appurtenances to the said *R. H.* from the feast of the birth of our Lord *Christ* then next following for the term of one whole year from thence next ensuing fully to be compleat and ended ; yielding therefore for the same year to the said *R. H.* or his assigns, the rent of — of lawful money of *Great Britain*, at the four most usual feasts in the year, to wit, the feasts of the annunciation of the blessed Virgin *Mary*, *St. John* the Baptist, *St. Michael* the Archangel, and the birth of our Lord *Christ*, by even and equal portions : By virtue of which said demise the said *R. H.* into the messuage aforesaid with the appurtenances entred, and was thereof possessed, and the same messuage with the appurtenances for the space of three quarters of a year occupied ; and because the sum of — of the rent aforesaid, after the demise so made for the said three quarters of a year at the feast of *St. Michael* last past, and before the taking of the goods and chattels aforesaid,

foresaid, were to the same *R. H.* in arrear and unpaid, the same *R. H.* well avows the taking of the goods and chattels aforesaid in the said place where, &c. and justly, &c. for the said ——— to the same *R. F.* in form aforesaid being in arrear, as in the messuage aforesaid with the appurtenances to the distress of the said *R. H.* in form aforesaid charged and bound; And this he is ready to verify: Wherefore he prays judgment, and a return of the goods and chattels aforesaid, to be adjudged to him.

## DEMURRER's, &c.

### *Demurrer.*

**A**ND the said *J.* says, that he to the plea of the said *S.* above in replying pleaded hath no necessity, nor is by the law of the land obliged in any manner to answer, because he says, that the same plea is not sufficient in law to maintain his declaration aforesaid: And this he is ready to verify: Wherefore for want of a sufficient replication in this behalf the same *J.* as before prays judgment, and that the declaration aforesaid may be quashed.

### *Joinder in demurrer.*

**A**ND the said *T. S. R. P.* and *R. B.* say, that the plea aforesaid by the said *N.* above in bar to the avowry and cognisance aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude them the said *T. R.* and *R.* from having their avowry and cognisance aforesaid, and that they to that plea in manner and form aforesaid pleaded have no necessity, nor are by the law of the land obliged in any manner to answer: And this they are ready to verify: Wherefore for want of a sufficient plea in this behalf, the same *T. R.* and *R.* as before pray judgment, and a return of the cattle aforesaid, together with their damages, costs and expences, by them about their suit in this behalf sustained, according to the form of the statute in such case made and provided, to be adjudged to them, &c. And for causes of *demurrer* in law, the said *T. R.* and *R.* according to the form of the statute in such case lately made and provided, do set down, and to the court here express the causes following, to wit, because the matter is traversed otherwise than it is alledged in the declaration, whereby the plaintiff is obliged to prove what he hath not alledged, and likewise because the matter traversed is not traversable by the laws of this kingdom in the manner in which it is traversed in the plea.



*Demurrer, &c.*

**A**ND the said *J.* says, that by any thing by the said *J.* and *J.* above in the cognisance aforesaid by pleading alledged, the same *J.* and *J.* the taking of the *cow* aforesaid in the said place in which, &c. ought not to acknowledge just, because he says, that the plea aforesaid by them the said *J.* and *J.* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to acknowledge the taking of the *cow* aforesaid in the said place in which, &c. just, and that he to that cognisance in manner and form aforesaid made and pleaded hath no necessity, nor is by the law of the land obliged, to answer: And this he is ready to verify: Wherefore for want of a sufficient plea in this behalf the same *J.* prays judgment, and his damages by reason of the taking and unjust detention of the *cow* aforesaid, to be adjudged to him, &c.

*Joinder in Demurrer.*

And the said *J.* and *J.* say, that the plea aforesaid by them the said *J.* and *J.* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law for them the said *J.* and *J.* to acknowledge the taking of the *cow* aforesaid in the said place in which, &c. just; which said plea, and the matter in the same contained, they the said *J.* and *J.* are ready to verify and prove, as the court, &c. And because the said *J.* hath not pleaded or answered to that cognisance, nor hitherto any way denied it, the same *J.* and *J.* pray judgment, and a return of the *cow* aforesaid, together with their damages, costs and charges, according to the form of the statute in such case made and provided, to be adjudged to them, &c. But because the court of the said Lord the King now here are not yet advised to give their judgment of and upon the premisses, day therefore is given to the parties aforesaid before the lord the King until ——— wheresoever, &c. to hear their judgment of and upon those premisses, because the court of the said lord the King now here thereof not yet, &c.

*Demurrer, &c.*

**A**ND the said *W.* says, that the plea of the said *S.* above in rejoining pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *W.* from having his avowry and cognisance aforesaid, and that he to that plea in manner and form aforesaid pleaded hath no necessity, nor is by the law of the land

land obliged, to answer : And this he is ready to verify : Wherefore for want of a sufficient plea in this behalf, the said *W.* as before prays judgment, and a return of the cattle aforesaid, together with his damages, costs and expences by him about his suit in this behalf sustained, according to the form of the statute in such case thereof lately made and provided, to be adjudged to him, &c. And for cause of demurrer in law to that plea, the said *W.* according to the form of the statute in such case thereof lately made and provided, sets down, and to the court here expresses this cause following, to wit, that the value of the land remains in estimation, and the custom aforesaid by the said *S.* above in pleading pretended and alledged is uncertain, insufficient and void in law.

*Joinder in Demurrer.*

And the said *S.* for that he hath above alledged sufficient matter in law in his plea aforesaid above in rejoining pleaded to preclude the said *W.* from having his avowry and cognisance aforesaid, which he is ready to verify, which said matter the said *W.* doth not deny, nor thereto in any wise answer, but altogether refuses to admit that averment, as before prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c. And because the Justices here will advise themselves of and upon the premisses before they give judgment thereon, a day therefore is given to the parties aforesaid here until on — next after — to hear their judgments thereon, because the same Justices here thereof not yet, &c.

I N Q U I R I E S.

*Of damages in replevin where judgment was given for the defendant on demurrer.*

**G**EORGE the third, &c. To the Sheriff of *Middlesex*, greeting : Whereas *J. S.* late of ———, Esq; was summoned to be in our court before us to answer to *W. P.* Esq; in a plea, why on the — day of — in the — year of our reign, at the parish of *St. Clement Danes* in your county, in a certain place there called a chamber in *Devereux Court*, he took the goods and chattels of him the said *W.* to wit, one bed, one bedstead, one bolster, one pillow, four curtains vallance, two blankets, one quilt, one chest of drawers, 20 books, one looking-glass, one large brush, one large trunk, and four chairs, and unjustly detained them, against surety and pledges, until, &c. And the said *J. S.* came and in our said court before us alledged and said, that the said *W.* ought not to have or maintain his action aforesaid

aforesaid thereof against him, because he said, that as to the said one bed, one bedstead, one bolster, one pillow, four curtains vallance, two blankets, one quilt, one looking-glass and 10 books, parcel of the goods and chattels aforesaid in the declaration aforesaid mentioned, the property of those goods and chattels at the said time of the taking of the same was in him the said *J.* without that, that the property of the said goods and chattels at the said time of the taking of the same was in the said *W.* as by the declaration aforesaid was above supposed: And this he was ready to verify: And as to the said one chest of drawers, one large brush, one large trunk, 10 other books and four chairs, the residue of those goods and chattels last mentioned, the property of the same goods and chattels was in one *R. F.* without that, that the property of the residue of those goods and chattels was in the said *W.* as by the declaration aforesaid was above supposed: And this he was ready to verify and prove, &c. Wherefore he prayed judgment if the said *W.* ought to have or maintain his action aforesaid thereof against him, &c. and he prayed also a return of all and singular the goods and chattels aforesaid, together with his damages, costs, and charges by him about his suit in that behalf expended, to be adjudged to him, &c. And the said *W.* said, that the plea aforesaid by the said *J.* above pleaded, and the matter in the same contained, were insufficient in law to preclude him the said *W.* from having his action aforesaid against the said *J.* and that he to that plea in manner and form aforesaid pleaded had no necessity, nor was by the law of the land obliged in any manner to answer: And this he was ready to verify: Wherefore for want of a sufficient answer in this behalf, he the same *W.* prayed judgment and his damages, by reason of the caption and unjust detention of the goods and chattels aforesaid, to be adjudged to him, &c. And the said *J.* said, that the plea aforesaid by him the said *J.* in manner and form aforesaid above pleaded, and the matter in the same contained, were good and sufficient in law to preclude the said *W.* from having his action aforesaid against him the said *J.* which said plea, and the matter in the same contained, he the same *J.* was ready to verify and prove, as the court, &c. And because the said *W.* did not answer to that plea, nor hitherto in any wise deny it, he the same *J.* (as before) prayed judgment, and a return of all and singular the goods and chattels aforesaid, together with his damages, &c. to be adjudged to him, &c. And it was thereupon in such manner proceeded in our same court before us, that it was considered, that the plea aforesaid by him the said *J.* above pleaded, and the matter in the same contained, were good and sufficient in law to preclude the said *W.* from having his action aforesaid against him the said *J.* It was also considered, that the said *W. P.* should take nothing by his writ aforesaid, but for his false claim should be in mercy, &c. and that the said *J.* ought to recover his damages against the said *W.* by reason of the caption and unjust detention of the goods and chattels aforesaid: Therefore we command you, that by the oath of 12 good and lawful men of your bailiwick you diligently inquire what damages the same



J. hath sustained, as well by reason of the caption and unjust detention of the goods and chattels aforesaid, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which you shall thereof take send to us on ——— wheresoever we shall then be in *England*, under your seal and the seals of those by whose oath you shall take that inquisition, together with our writ to you therefore directed. Witness *William Lord Mansfield*, at *Westminster* ——— day of ——— in the ——— year of our reign.

*Of the arrear of rent and value of the cattle distrained on a nonsuit in replevin.*

**G**EORGE, &c. To the sheriff of *Suffex*, greeting: Whereas *W. A.* was summoned to be in the court of our Lord the now King before the King himself, to answer to *M. G.* in a plea, why the said *W.* on the ——— day of ——— in the ——— year of the reign of our Lord the now King, at *C.* in the county aforesaid, in a certain place there called the *Croft*, took the cattle to wit, *eight ewes* and *six lambs* of him the said *M.* and them unjustly detained, against surety and pledges, &c. And the same *W.* in the same court before the said Lord the now King appearing, for a certain cause by him alledged said, that he took the cattle aforesaid at *R.* otherwise *C.* in the county aforesaid; without that, that he took the cattle aforesaid at *C.* in the county aforesaid, as the said *M.* by his declaration aforesaid had above alledged: And this he was ready to verify: Wherefore he prayed judgment of the writ aforesaid, and that the said writ and declaration, &c. and to have a return of the cattle aforesaid; the said *W.* as bailiff of *R. R.* well acknowledged the taking of the cattle aforesaid in the said place to be just, &c. because he said, that the same place, called the *C.* contained in itself *five acres* of land with the appurtenances in the said parish of *R.* otherwise *C.* in the county aforesaid, of which said *five acres* of land with the appurtenances of the said *R. R.* before the said time when, &c. was seised in his *demesne* as of fee; and being so thereof seised, before the said time when, &c. to wit, on the ——— day of ———, in the ——— year of the reign of our Lord the now King, at the parish of *S.* in the county aforesaid, the said *R. R.* demised to one *M. G.* the younger the said *five acres* of land with the appurtenances, by the name of *all those two pieces or parcels of pasture*, called the *C.* with the appurtenances lying and being in *R.* otherwise *C.* aforesaid; *To have and to hold* the said *five acres* of land with the appurtenances whereof, &c. to the same *M. G.* from the feast of the *annunciation of the blessed virgin Mary* then next ensuing, unto the end and term of one whole year, and so from year to year as long as both parties should please; *Yielding and paying* therefore the yearly rent or sum of ——— of lawful money of *Great Britain*, at the two most usual feasts or terms in the year, to

wit, on the feast of *St. Michael the archangel* and the *annunciation of the blessed virgin Mary*, by even and equal portions to be paid: By virtue of which demise the same *M. G. the younger*, afterwards and before the said time when, &c. to wit, on the ——— day of ——— in the year last above said, into the said *five acres* of land with the appurtenances, whereof, &c. entred, and was thereof possessed; and he the said *M. G. the younger* being so thereof possessed, and the said *R.* of the reversion of the said *five acres* of land with the appurtenances being seised in his *demesne* as of fee; and because ——— s. of the rent aforesaid, for one year ended at the feast of the *annunciation of the blessed virgin Mary*, in the ——— year of the reign of our Lord the now King, to the same *R.* after that feast, and at the same time when, &c. were in arrear and unpaid, the same *W.* as bailiff of the said *R.* well acknowledged the taking of the cattle aforesaid, in the said place in which, &c. as in parcel of the tenements aforesaid, with the appurtenances whereof, &c. to the said *M. G.* in form aforesaid demised, and justly, &c. for the said ——— s. rent to the said *R.* in form aforesaid being in arrear, &c. And this he was ready to verify: Wherefore he prayed judgment, and a return of the cattle aforesaid, together with his damages, costs and charges in this behalf expended, according to the form of the statute in such case made and provided, to be adjudged to him, &c. And the said *M.* prayed leave of our court before us until on the *morrow of the Holy Trinity*, wherefore, &c. to plead in bar to the cognisance aforesaid; and he had, &c. The same day was given to the said *W.* &c. On which day came the said *W.* into our same court before us at *Westminster*; and the said *M.* although solemnly called, did not come, nor farther prosecute his writ aforesaid: Therefore it is considered, that the said *M.* take nothing by his writ aforesaid, but be in *mercy* for his false claim thereof, and that the said *W.* do go thereof without day, &c. Therefore we command you, that according to the form of the statute in such case lately made and provided, by the oath of *twelve* good and lawful men of your county you diligently inquire how much of the yearly rent aforesaid at the said time of the taking and distraining of the goods and chattels aforesaid, was in arrear and unpaid, and how much the goods and chattels aforesaid, so as aforesaid taken and distrained were worth, according to the true value of the same; and the inquisition which, &c. send to us from the day of *St. Michael* in three weeks under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness *William Lord Mansfield, &c.*

*Of damages in replevin after a judgment on demurrer.*

**G**EORGE the Third, &c. To the sheriff of G. greeting: Whereas *J. W.* Gent. lately in our court before us at *Westminster*, by our writ impleaded *F. C.* Esq; *H. C.* the elder, *G. T. W. B.* and *H. C.* the younger, in a plea why they took the cattle of him the said *J.* and them unjustly detained, against surety and pledges, &c. And thereupon the same *J.* by *T. E.* his attorney complained, that the said *F. H. C.* the elder, *G. W.* and *H. C.* the younger, on the — day of —, in the — year of the reign of the Lord *George* the Second, late King of *England*, &c. at the parish of *St. Philip* and *James*, in your county aforesaid, in a certain place there called *C.* took the cattle, to wit, *fifty sheep* of him the said *J.* and them unjustly detained, against surety and pledges, until, &c. whereby he then said that he was prejudiced, and had damage to the value of — pounds. And therefore he then produced the suit, &c. And thereupon the said *F. H. G. W.* and *H.* by *C. H.* their attorney came and defended the force and injury when, &c. And the said *F.* in his own right well avowed, and as bailiff of *T. S.* and *S. C.* Gent. well acknowledged, and the said *H. G. W.* and *H.* as bailiffs of the said *F. T.* and *S.* well acknowledged the taking of the cattle aforesaid, in the said place in which, &c. and justly, &c. because they said that long before the said time when, &c. the Lord *George* the Second, late King of *England*, &c. was seised of, and in the forest or chase called *King's-wood*, with the appurtenances in your county aforesaid, in his demesne as of fee in the right of his crown of *England*; and that the said place in which, &c. is and at the said time when, &c. and also for time immemorial was within the forest aforesaid, and parcel of the same forest, and that the same late King being so seised before the said time when, &c. by indenture made at *Westminster*, in the county of *Middlesex*, on the — day of —, in the — year of the reign of the same late King, between the same late King on the one part, and one *B. T.* Knt. and Bart. on the other part, which said indenture, sealed under the great seal of *England*, the same *F. H. G. W.* and *H.* then in court produced, the date whereof is the day and year last aforesaid, the same late King *George* the Second, for the considerations in the same indenture mentioned, with the advice of two of the commissioners of the treasury of the same late King granted, demised and to farm let to the said *B.* the forest or chase aforesaid, with the appurtenances, by the name of all that forest or chase called *King's-wood*, lying and being in or near the parish of *St. Philip* and *James* in the city of *Bristol*, in the parish of *Bitten Mangesfield*, otherwise *Mangerfield Stapleton*, otherwise *Stableton*, *Hambrooke* and *Westanham* in your county, containing by estimation — acres of waste land, more or less, and extending on sundry other lands, as well waste as inclosed, in or near the parishes aforesaid, or some of them, together with all



bucks, does, and other beasts then being within the limits of the forest or chase aforesaid, And all liberties, franchises, privileges, rights and appurtenances to the same forest or chase belonging, incident or appendant, or within the forest or chase then before had, used or enjoyed in the times of the Lady *Anne*, late Queen of *England*, or of the Lord *George* the First, late King of *England*, and the Lord *George* the Second late King of *England*, or any of them, by reason or pretence of the said forest or chase, or the liberties and franchises of the same, *To have and to hold* the said forest, chase, franchises, liberties, privileges, and all and singular other the premises in the said indenture mentioned and intended to be thereby granted, with their and every of their appurtenances to the said *B. T.* his executors, administrators and assigns, from the feast of *St. Michael the archangel* then last past, for and during the term of ——— years from thence next ensuing, and fully to be compleat and ended: And the said late King *George* the Second willed, and by the same indenture for himself, his heirs and successors, *Gave* and granted to the said *B.* his executors, administrators and assigns, full power and authority to replenish the forest or chase aforesaid with deer, and by all lawful ways and means to erect lodges for the keepers, and to hinder and suppress purprestures, assarts and nuisances there, of what nature or kind soever, and also to preserve the covert and vert for the safety and preservation of the beasts aforesaid, as by the indenture aforesaid, among other things is more fully manifest; by virtue of which said demise, the said *B.* in the forest or chase aforesaid, with the appurtenances entered, and was thereof possessed, and being so thereof possessed, the same *B.* afterwards, and before the said time when, &c. to wit, on the ——— day of ———, in the ——— year of the reign of the said Lord King *George* the Second, at the parish of *St. Philip* and *James* aforesaid, assigned to one *M. B.* the premises aforesaid, with the appurtenances, and all his right, title and interest of and in the same, *To have and to hold* to the same *M.* her executors and assigns, during all the residue of the said term of ——— years then to come and unexpired, by virtue of which said assignment the same *M.* into the premises aforesaid entered, and was thereof possessed; and being so thereof possessed, the said *M.* afterwards and before the said time when, &c. to wit, on the ——— day of ———, in the ——— year of the reign of the said Lord King *George* the Second, at the parish of *St. Philip* and *James* aforesaid, assigned to the said *F. T.* and *S.* the premises aforesaid, with the appurtenances, and all her right, title and interest of and in the same, *To have and to hold* to the same *F. T.* and *S.* during all the residue of the said term of ——— years then to come, and unexpired, by virtue of which said assignment, the same *F. T.* and *S.* into the premises aforesaid, with the appurtenances entered, and were and yet are thereof possessed; and because the cattle aforesaid at the said time when, &c. were in the said place in which, &c. eating up the grass there growing, and doing damage there, the said *F.* in his own right well avowed, and as bailiff of the said *T.* and *S.* acknowledged, and the said *H. G. W.* and *H.* as bailiffs of the said *E. T.*

*E. T.* and *S.* well acknowledged the taking of the cattle aforesaid, in the said place in which, &c. and justly, &c. so doing damage there: And this they were ready to verify: Wherefore they prayed judgment, and a return of the cattle aforesaid, together with their damages, costs, and charges in that behalf expended, according to the form of the statute in such case made and provided, to be adjudged to them, &c. And the said *J. W.* thereto said, that the said *F. H. G. W.* and *H.* for the reason before alledged, ought not as bailiffs of the said *T. S.* and *S. C.* to acknowledge, nor the said *F.* in his own right to avow the taking of the cattle aforesaid in the said place in which, &c. just; because by protesting that the said Lord King *George* the Second, never was seised of the soil or land of the forest or chase of *King's-wood* aforesaid, for plea the same *J. W.* said, that long before the said time of the taking of the cattle aforesaid made, and also before the said time when it is supposed that the said late King *George* the Second was seised of the forest or chase aforesaid, to wit, on the ——— day of ———, in the ——— year of the reign of the late King *George* the First, *J. W.* the elder, father of him the said *J. W.* was seised of the manor of *St. Lawrence* within the parish of *St. Philip* and *James*, with the appurtenances in your county aforesaid, whereof the said place in which, &c. is and at the said time when, &c. and also for time immemorial was parcel, in his *demesne* as of fee; and being so thereof seised, the same *J. W.* the elder afterwards and before the said time when, &c. at *C.* aforesaid died of such his estate thereof seised, after whose death the said manor with the appurtenances, whereof the said place in which, &c. is parcel, descended to the said *J.* as son and heir of him the said *J.* by reason whereof the said *J.* the son afterwards and before the said time when, &c. into the said manor with the appurtenances entered, and at the time of the taking of the cattle aforesaid was and yet is seised thereof, in his *demesne* as of fee, and being so thereof seised, the same *J.* before the said time when, &c. put his cattle aforesaid into the said place in which, &c. to feed on the grass there then growing, until the said *F. H. G. W.* and *H.* on the day and year in the declaration aforesaid specified at *C.* aforesaid, took the cattle aforesaid of him the said *J.* and unjustly detained them against surety and pledges, until, &c. as he above against them complained: And this he was ready to verify: Wherefore he prayed judgment and his damages, by reason of the caption and unjust detention of those cattle, to be adjudged to him, &c. And the said *F. H. G. W.* and *H.* thereupon said, that the said plea of the said *J.* above in bar of the avowry and cognisance aforesaid pleaded, was insufficient in law to maintain him the said *J.* to have his action aforesaid against them the said *F. H. G. W.* and *H.* and that they to that plea in manner and form aforesaid pleaded had no necessity, nor were by the law of the land obliged in any manner to answer: And this they were ready to verify: Wherefore for want of a sufficient plea in this behalf they prayed judgment, and a return of the cattle aforesaid, together with their damages in this behalf sustained, to be adjudged to them, &c.

And for cause of demurrer in law in this behalf, the same *F. H. G. W.* and *H.* did set down, and to the court here express the causes following, to wit, that the said *J.* in his plea aforesaid did not traverse the matter in the avowry and cognisance aforesaid, when he ought to traverse that matter, as they said; and because the matter of that plea was not issuable nor triable, and because that plea was insufficient and wanted form, and thereupon the said *J. W.* said that the plea aforesaid by him the said *J.* above in bar to the avowry and cognisance aforesaid pleaded, and the matter in the same contained, were good and sufficient in law to preclude the said *F. H. G. W.* and *H.* from having their avowry and cognisance aforesaid; which said plea, and the matter in the same contained, the same *J.* was ready to verify and prove, as the court, &c. And because the said *F. H. G. W.* and *H.* to that plea did not answer, nor hitherto in any wise deny it, the same *J.* as before prayed judgment and his damages aforesaid, by reason of the caption and unjust detention of the cattle aforesaid, to be adjudged to him, &c. And because the court of the said Lord the King here were not advised to give their judgment of and upon the premises, day therefore was given to the parties aforesaid before the said Lord the King from the day of *Easter* in 15 days, wheresoever, &c. to hear their judgment of and upon the premises, because the court of the said Lord the King thereof, &c. On which day before the Lord the King at *Westminster* came the parties aforesaid, by their attornies aforesaid; whereupon all and singular the premises being seen, and by the court of the said Lord the King fully understood, and mature deliberation being thereon had, it was considered that the plea aforesaid by him the said *J.* above in bar to the avowry and cognisance aforesaid pleaded, was good and sufficient in law to maintain him the said *J.* to have his action aforesaid against them the said *F. H. G. W.* and *H.* Wherefore it was also considered, that the said *J.* ought to recover his damages against them the said *F. H. G. W.* and *H.* by reason of the caption and unjust detention of the cattle aforesaid; but because it is not known what damages the said *J.* hath sustained by the reason aforesaid; therefore we command you, that by the oath of twelve good and lawful men of your bailiwick you diligently inquire what damages the said *J.* hath sustained, as well by reason of the premises as for his costs and damages by him about his suit in this behalf expended; and the inquisition which you shall thereupon take, send to us ——— wheresoever, &c. under your seal and the seals of those by whose oath you shall take that inquisition, together with this writ. Witness *William* Lord *Mansfield*, at *Westminster*, the ——— day of ———, in the ——— year of our reign.



*The manner of entering an inquisition in replevin, according to the statute of 17 Car. 2. upon a judgment for the avowant upon a demurrer, where a writ of inquiry was awarded to inquire of the value of the distress, and a judgment thereon.*

AFTER awarding the inquiry, and the words, The same day is given to the (plaintiff) to be there, &c. you say thus:

**A**T which day the said T. R. (i. e. the plaintiff) comes before our Sovereign Lord the King, at *Westminster*, by his attorney aforesaid, and the sheriff (to wit) J. A. Esq; returns an inquisition taken before him at the castle of *York*, in the county aforesaid, on the ——— day of ———, in the ——— year of the reign of His present Majesty, whereby it is found that the said *six* hogsheads of allum, at the time of the taking thereof, were worth ——— pounds, according to the true value thereof; therefore it is adjudged, that the said T. R. do recover against the said J. M. the said ——— pounds, for the value of the said *six* hogsheads of allum, part of the said rent, being in arrear as aforesaid, found by the said inquisition in the manner aforesaid, and his damages sustained by reason of the premises here adjudged by the said court of our said Sovereign Lord the King, according to the form of the statute in such case made and provided, to the said T. R. to ——— pounds, with his consent, for his expences and costs laid out by him about his suit in this cause, which said value, expences and costs, do in the whole amount to ——— pounds, and be the said J. M. amerced, &c.

*An inquisition and judgment upon the same statute, upon a judgment on a demurrer for the avowant, and a writ to inquire of the monies in arrear, and of the value of the distress, and judgment thereon.*

AFTER the judgment upon the demurrer that the plea in bar to the avowry is insufficient, concluding, that the plaintiff take nothing by his writ, but be amerced for his false complaint, and that the defendant is dismissed the court, you go on thus:

**A**ND thereupon they the said T. A. W. and T. according to the form of the statute in such case made and provided, pray His Majesty's writ to be directed to the sheriff of the county aforesaid, to inquire what monies were in arrear for the rent aforesaid, at the

the time distress made as aforesaid, and the value [or price] of the cattle taken; therefore the sheriff is commanded, that by the oath of twelve good and lawful men of his bailiwick he diligently inquire what sums of money were in arrear for the rent aforesaid at the time of the distress made, and what was the value of the cattle distrained according to the true value thereof; and the inquisition which, &c. the sheriff should return, or make appear here in *three weeks* from the day of *St. Michael*, under the seal, &c. and the seals, &c. at which day *T. A. W.* and *T.* came here by their said attorney, and the sheriff, (to wit) *Sir R. M. Knt.* and *Bart.* now returns an inquisition taken before him at the castle of *York* in the county aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ last past, by the oath of twelve good and lawful men, whereby it is found that the said sums of money in arrear for the rent aforesaid, to the said *T. L.* at the time of the distress were \_\_\_\_\_ pounds, that the distrained, according to the true value (or price) thereof, were worth \_\_\_\_\_ pounds: Therefore it is adjudged, that the said *T. A. W.* and *T.* do recover against the said *R. P.* the said \_\_\_\_\_ pounds, for the value of the cattle aforesaid, being part of the rent in arrear as aforesaid, found by the said inquisition in the manner aforesaid; and his damages by reason of the premises, by this court adjudged to the said *T. A. W.* and *T.* at their request, by the discretion of the justices here, for his expences and costs laid out by them in this suit, according to the form of the statute in such case made and provided, to \_\_\_\_\_ pounds, which value, expences and costs, do, in the whole amount to \_\_\_\_\_ pounds, &c.

# W R I T S.

*A Retorno Habendo after judgment for the defendant, on a demurrer in replevin.*

**G**EORGE the Third, &c. To the sheriff of *Middlesex*, greeting: Whereas *J. S.* late of the parish of *St. Clement's Danes* in your county, Esq; was summoned to be in our court before us, to answer to *W. P.* Esq; of a plea, (or in an action) wherefore on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of our reign, at the parish of *St. Clement's Danes* in your county, in a certain place there, called a *Chamber*, in *Devereaux Court*, he took the goods and chattels of the said *W.* (to wit) one bed, one bedstead, &c. (so naming the goods), and unjustly detained them against sureties and pledges, until, &c. and the said *J. S.* came into our same court before us, and alleged and pleaded, that the said *W.* ought not to have or maintain his said action thereof against him, because he said, that as to the one bed, one bedstead, (repeating part of the goods) part of the goods and chattels aforesaid in the said declaration mentioned, that the property of those goods and chattels at the aforesaid time of taking them were the

the property of the said *J.* and this he was ready to verify; and as to one Couch, ten other books, [*So naming the goods to which he pleads this plea*] residue of the said goods and chattels in the declaration of the said *W.* mentioned, the said *J.* pleaded, That at the time of taking those goods and chattels the property of them was in and belonged to one *R. F.* without that; that the property of the said residue of the goods and chattels in the declaration mentioned; at the time when, &c. was the property of the said *W.* as by the said declaration above was supposed; and this he was ready to verify and prove; wherefore he prayed judgment, if the aforesaid *W.* ought to have or maintain his said action against him for the same, &c. and he also prayed a return to be adjudged to him of all the goods and chattels aforesaid, together with his damages, expences and costs laid out by him about his suit in that behalf; and the said *W.* replied, That the plea of the said *J.* above pleaded, and the matter therein contained, were not insufficient in law to preclude the said *W.* from having his said action against the said *J.* for the same, and that he was not under a necessity, nor was bound by the law of the land to answer in any manner to that plea, in the manner and form as the same was pleaded; which he was ready to verify; wherefore for want of a sufficient answer in that behalf, he said *W.* prayed judgment, and his damages occasioned by the taking and unjustly detaining the goods and chattels, to be adjudged to him, &c. and the said *J.* rejoined, That the plea aforesaid by him pleaded, in the manner and form aforesaid, and the matters therein contained, were good and sufficient in law to preclude the said *W.* from having his action aforesaid thereof against the said *J.* which plea, and the matters therein contained, he the said *J.* was ready to verify and prove, as the court should require; and because the said *W.* had not answered to that plea, nor in any wise denied the same, he the said *J.* as above, prayed judgment, and a return of all and singular the goods and chattels aforesaid, together with his damages, &c. to be adjudged to him, &c. and such proceedings were thereupon had in our same court before us, that it was adjudged, that the said plea by him the said *J.* above pleaded, and the matters therein contained, were good and sufficient in law to preclude the aforesaid *W.* from having his said action against the said *J.* and it was also considered by our same court before us, that the said *W.* should take nothing by his said writ, but for his false claim therein should be in *mercy*, (or *amerced*) &c. and that the aforesaid *J.* S. should go thereof without a day, (or *should for ever be dismissed the court*), &c. and that he should have a return of the goods and chattels aforesaid, to be delivered to him for ever irreplegiabie: And further it was considered in our said court before us, That the aforesaid *J.* ought to recover his damages against the said *W.* by reason of the premises: Therefore we command you, that without delay you cause the said *J.* to have a return of the goods and chattels irreplegiabie, and that you shall not deliver those things of which you have made mention, which belong to the complaint of the said *W.* without our writ, which shall expressly mention the said judgment; and in what manner you shall execute this writ, do



you make appear to us, wheresoever we shall then be in *Great Britain*, on ———— We command you likewise, That by the oath of twelve honest and lawful men of your bailiwick, according to the form of the statute in that case made and provided, you diligently enquire what damages the said *J.* hath sustained, as well by reason of the premises, as for his expences and costs laid out by him about his suit in that behalf; and the inquisition which you shall take thereon do you return to us at the day aforesaid, wheresoever we shall then be in *Great Britain*, under your seal, and the seals of those by whose oath you shall take such inquisition, together with this our writ to you directed for that purpose. *Witness &c.*

*The Return of a writ of Retorno Habendo and a writ of Enquiry by the Bailiff of the liberty, and a Non omittas and a Capias awarded.*

**A**T which day comes here the said defendant by his attorney aforesaid, and the sheriff, (that is to say) *W. H. Esq.* now returns here, that in order to have an execution of the writ aforesaid to him directed, he made a mandate to ———— bailiff of the liberty of our sovereign lord the king, of his duchy of *Lancaster* in the county aforesaid, who hath full power of returning all writs, and of executing the same within the liberty aforesaid, to whom the execution of the writ aforesaid doth entirely belong to be made; for that no execution of the writ aforesaid, within the liberty aforesaid, in his bailiwick, could be made by him, which bailiff made a return to the said sheriff, upon the mandate aforesaid, that before the coming of the mandate aforesaid to his hands, the cattle, goods, and chattels aforesaid were elained by the said plaintiff to places to the said bailiff unknown, so that he could not cause the cattle, goods, and chattels aforesaid of the said (*defendant*) to be returned, as by the warrant aforesaid he was commanded; the said bailiff also returned, to the said sheriff an inquisition taken before him at *F.* within the liberty aforesaid in the county aforesaid, on the ———— day of ———— last past, by the oath of twelve, &c. by virtue of the warrant aforesaid directed by the sheriff upon the writ aforesaid to the said bailiff, by which it was found, that the said defendant sustained damage by reason of the premises, besides his costs, to ———— and for those costs and charges to ———— Therefore it is adjudged, That the said defendant do recover against the said plaintiff his damages aforesaid to ———— by the inquisition found in the manner aforesaid; and also ———— pounds to the said defendant at his request, for his costs and charges aforesaid, adjudged by the court by way of increase, which damages do in the whole amount to ———— &c. And hereupon the sheriff is commanded, that he do not omit by reason of any liberty of the duchy of *Lancaster* aforesaid; but that of other cattle, goods, and chattels of the (*plaintiff*) to the value of

the cattle, goods, and chattels aforesaid before taken, he take in *Wibernam*, and deliver them to the said defendant, to be detained by him until the cattle goods, and chattels aforesaid before taken be delivered by the (said plaintiff) and in what manner, &c. the sheriff shall make appear, &c.

*A writ of Retorno Habendo against the plaintiff, for default of his plea in bar to an avowry.*

**G**EORGE the Third, &c. greeting : Whereas *C. D.* lately in our court before us at *Westminster*, was summoned to answer *E. F.* in an action, wherefore he took nine cows, the cattle of him the said *E.* and unjustly detained them, against sureties and pledges, &c. and the said *C.* appearing in our same court before us for a certain reason by him alledged in our same court, in his own right, and the right of *S.* his wife, well avowed the taking of the said cattle in the place in which &c. to be just, for *9 l.* rent due and in arrear from him the said *E.* to the said *C.* and *S.* for one half year, ending at the feast of the Annunciation of the Blessed Virgin *Mary* next before, &c. [as in the avowry] for one messuage, &c. with the appurtenances in *W.* demised by them the said *C.* and *S.* to the said *E.* whereupon the said *E.* tho' solemnly called did not appear, nor doth further prosecute the said writ; wherefore it was considered in our same court before us, That he and his pledges for prosecuting should be amerced, and that the said *C.* might depart the court thereon without a day, and should have a return of the said cattle : Therefore we command you, That without delay you return the said cattle to the said *E.* and you shall not deliver them at the complaint of the said *R.* without our writ, which shall expressly mention the said judgment; and in what manner you execute this writ, you make appear to us in three weeks from the day of *St. Michael*, wheresoever, &c. and have you there this writ. WITNESS, &c.

*A writ of Retorno Habendo upon a judgment against the plaintiff by default.*

**G**EORGE the Third, &c. greeting : Whereas *T. E.* lately in our court before us at *Westminster*, was summoned to answer *R. R.* in an action wherefore he took seven cows, the cattle of him the said *R. B.* and unjustly detained them, against sureties and pledges, &c. as he alledged; and the said *R.* afterwards made default in our said court before us; wherefore it was considered in our said court before us, that he and his pledges for prosecuting should be amerced, and that the said *T.* might depart the court without a day, and should have a return of the cattle aforesaid : Therefore we command you,

That without delay you return the said cattle to the said *T.* and you shall not deliver them at the complaint of the said *R.* without our writ, which shall expressly mention the said judgment; and in what manner you execute this writ, you shall make appear to us in three weeks from the day of *St. Michael*, wheresoever, &c. And have you there this writ. WITNESS, &c.

*Form of a writ of second deliverance, in K. B.*

**G**EORGE the Third, To the Sheriff of *Essex*, greeting: If *T. W.* shall give you security that he will prosecute his claim, and also to return the cattle (\* which in our court before us were lately adjudged to *T. J.* through the default of the said *T. W.*) if a return thereof shall be adjudged; then do you cause those cattle without delay, (or forthwith) to be delivered to the said *T. W.* and by the sureties and safe pledges compel the said *T. J.* that he before \* us in three weeks from the day of *St. Michael*, wheresoever we shall then be in *England*, to answer to the said *T. W.* for taking and unjustly detaining the cattle aforesaid; and have you there the names of the pledges, and this writ. WITNESS *William Lord Mansfield*, the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of our reign.

*Another form of this writ, in K. B.*

**G**EORGE the Third, &c. To the Sheriff of *Essex*, greeting: If *C. D.* shall give you security that he will prosecute his claim, and also return the cattle which in our court before us were lately adjudged to *A. B.* through the default of the said *C.* We command you, That if by means of our writ *de Retorno Habendo* lately directed to you for that purpose, you have made a return of the said cattle to the said *C. D.* then do you cause them to be delivered to the said *C. D.* and by sureties and safe pledges compel the said *A.* that he be before us on the *octaves* of *St. Hilary*, wheresoever we shall then be in *England*, to answer to the said *C.* for taking and unjustly detaining the cattle aforesaid; and have you there the names of the pledges, and this writ. WITNESS, &c.



*The form of the entry of an award of a writ of second deliverance, in K. B.*

*T. F.* by *A. B.* his attorney, offers (or tenders) on the fourth day against *W. T.* of a plea, (or in an *Action* wherefore he took the cattle of the said *W. T.* and unjustly detained them against sureties and pledges; and he came not, and the plaintiff was there, &c. Therefore he and his pledges, to wit, *John Doe* and *Richard Roe*, are amerced, &c. and the said *T. F.* may depart the court therefrom without a day, &c. and may have a return of the cattle aforesaid, &c. and afterwards, (to wit) on the octaves of *St. Martin* then next following, before our Sovereign Lord the King at *Westminster*, comes the said *W.* by *J. B.* his attorney, and by virtue of the statute in such case made and provided, prays his Majesty's writ of *Second Deliverance*, &c. and it is granted him, &c. returnable on the octaves of *St. Martin*, wheresoever, &c. the same day is given to the said *T. F.* &c.

Note, The difference between this writ in the Common Pleas from the former, is no otherwise than at the first asterism in the first writ before, you say, which in our court before our justices at *Westminster* were adjudged to *T. J.* through the default of the said *T. W.* And at the second asterism you say, that he be before our justices at *Westminster* in three weeks from the day of *St. Michael*, to answer, &c.

*The form of a writ of Second Deliverance after bail taken, in C. B.*

*GEORGE* the Third, &c. To the Sheriff of *Essex*, greeting:  
Because *L. B.* in our court before our justices at *Westminster*, hath given you security that he will prosecute his claim, and will also make a return of those cattle which in our same court were adjudged to *S. R.* through the default of the said *L.* if a return thereof be adjudged to him: Therefore we command you, That without delay you cause a mare which you have taken in *Withernam*, of the cattle of the said *L.* to the value of the cattle formerly taken, to be delivered to the said *L.* and compel the said *S.* by sureties and safe pledges, that he be before our justices at *Westminster* on the octaves of *St. Hilary*, to answer the said *L.* for taking and unjustly detaining the cattle aforesaid; and have you there the names of the pledges, and this writ,  
WITNESS Sir *William De Grey*, Knight, the —————  
day of ————— in the ————— year of our reign.

*The Sheriff's return on this writ.*

**B**Y virtue of this writ to me directed, I have caused to be delivered to the within named *L.* his cattle within mentioned, as I am within commanded to do : The pledges within named are *J. D.* and *R. F.*

*J. D.* Esq. Sheriff.

*The form of the writ of capias in Withernam.*

**G**EORGE the Third, &c. To the sheriff of *S.* greeting : Whereas we lately commanded you by our writ, that whereas *T. B.* gentleman, had been attached by our *Writ of second deliverance*, to appear in court before us, to answer to *J. S.* in an action, wherefore he took the cattle of the said *J.* and unjustly detained them against sureties and pledges, and the said *J. S.* in our same court made default ; wherefore it was considered in our same court, that the said *T. B.* should depart hence without a day, and that the said *J. S.* and his pledges for prosecuting should be amerced ; and that the said *T. B.* should have a return of the cattle aforesaid irreplegiabie ; and that you without delay should make a return of those cattle to the said *T. B.* to be detained by him irreplegiabie ; and in what manner you should execute that writ, you should make known to us on [*the return*] wheresoever we should then be in *England* ; and you at that day returned to us, that the cattle aforesaid were eloigned by the said *T. S.* to places unknown to you, so that you could not return or deliver those cattle to the said *T. B.* as you was commanded by the said writ ; therefore we command you, that you take so many cattle of the said *J. S.* to the value of the cattle aforesaid, before taken by the said *J. S.* in *Withernam*, and deliver them to the said *T. B.* to be kept by him irreplegiabie, until you can make a return of those cattle before taken, to the said *T. B.* and in what manner you shall execute this our mandate, do you make appear to us on the *octaves* of *St. Hilary*, wheresoever we shall then be in *England* ; and that you cause further to be done therein, what of right, and according to the laws and customs of this our kingdom of *Great Britain*, we shall see meet to be done ; we also command you, that if the said *T. B.* shall make you secure of prosecuting his claim, and of returning the cattle aforesaid, if a return thereof should be adjudged, then do you compel the said *J. S.* by sureties and safe pledges, that he be before us on [*the return*] wheresoever we shall then be in *England*, to answer as well to us for the contempt, as to the said *T. B.* for his damage and injury done him in this case ; And have you there this writ. WITNESS, &c.

*Form of the Writ of Capias in Withernam, on a Writ of Pluries Replegiari Facias.*

**G**EORGE the Third, &c. To the Sheriff of *E.* greeting: Whereas we have often commanded you, that you should justly and without delay grant a replevin to *R. E.* of his chattels (to wit) of those which *T. T.* and *J. C.* had taken and unjustly detained (as it is said) according to our writ before delivered to you, or that you should be before us on [the return] wheresoever we shall then be in *England*, to shew us a reason, why you neglected to execute our mandates so often directed to you: And you at that day made a return to us, that the chattels aforesaid were eloigned by the said *T. T.* and *J. C.* out of your bailiwick to places to you unknown so that you could in no wise grant a replevin thereof to the said *R.* Therefore we command you, &c. [as in the former writ],

*Form of a Capias in Withernam on a Retorno Habendo, after an avowry and a Ca. Sa. against the party for the damages.*

**G**EORGE the Third, &c. To the Sheriff of the city of *G.* greeting: whereas *J. P.* was lately summoned in our court before us, to answer to *J. W.* of a plea [or in an action] wherefore he on the \_\_\_\_\_ day of \_\_\_\_\_ [in such a year] at the city of *G.* (to wit) in a place there called \_\_\_\_\_ had taken the cattle of the said *J.* (to wit) twenty sheep, and impounded and unjustly detained them, against sureties and pledges, until, &c. (as he declared); and the said *J. P.* appearing in our said court, for a certain reason therein alledged by him, well avowed the taking of the said cattle in the said place where, &c. to be just, &c. for damage feasant therein; and the said *J. W.* afterwards in our same court made default: Wherefore it was considered there, that they and their pledges for prosecuting should be amerced, &c. and that the said *J.* should be dismissed therefrom without a day; and that he should have a return of the cattle aforesaid: Therefore we lately commanded you, that you should without delay make a return of the cattle aforesaid to the said *J. P.* and that you should not deliver them at the desire of *J. W.* without our writ, which should expressly mention the judgment aforesaid; and in what manner you should execute that precept, you would make appear to us on [the return] wheresoever we should then be in *England*; We also lately commanded you, that according to the statute in such case



case made and provided, you should diligently inquire by the oaths of honest and lawful men of your bailiwick, what damages the said *J. P.* hath sustained, as well by reason of the premises, as for his expences and costs laid out by him about his suit in that behalf; and that you should return to us at the time aforesaid, the inquisition which you should take thereon, under your seal and the seals of those persons by whom you should take the inquisition, together with this writ; and you at that day returned to us, that the said cattle had been eloiigned by the said *J. W.* to the places unknown to you; for which reason you could not return those cattle to the said *J. P.* and you also returned a certain inquisition taken before you in the city of *G.* in the county of the said city, on the \_\_\_\_\_ day of \_\_\_\_\_ [*in such a year*] whereby it was found, that the said *J.* had sustained damages by reason of the premises, besides his expences and costs laid out by him about his suit in that behalf, to 10*s.* and for his expences and costs to 2*d.* Therefore it was adjudged, That the said *J. P.* should recover against the said *J. W.* his damages aforesaid found by the inquisition aforesaid; and also 10*l.* awarded by our court before us, to the said *J. P.* for his expences and costs by way of increase; which said damages in the whole amounted to 10*l.* 10*s.* 2*d.* and that the said *J. W.* should be amerced; Therefore we command you, that you take so many cattle of the said *J. W.* in your bailiwick, in *Withernam*, and without delay cause them to be delivered to the said *J. W.* to be detained by him irreplegiabie till he will make a return of the said cattle before taken to the said *J. B.* and in what manner you shall execute this our writ, do you make appear to us on the *octaves* of *St. Hilary*, wheresoever we shall then be in *England*: We command you also, that you take the said *J. W.* if he shall be found in your bailiwick, and keep him safely, so that you have his body before us at the time aforesaid, wheresoever we shall then be in *England*, to satisfy the said *J. P.* for the damages aforesaid; and have you there then this writ. WITNESS, &c.

*The form of a capias in withernam against the defendant's body and goods in a homine replegiando.*

GEORGE the Third, &c. To the Sheriff of *Middlesex*, greeting:  
 Whereas we have oftentimes commanded you that justly, &c. to *A.* his cattle which *B.* &c. detains, as it is said or should signify to us cause why you would not, or could not execute our command more than once directed to you thereupon, and you have signified to us that after the aforesaid *B.* took the cattle of the said *A.* he drove the same through your county, and from the county aforesaid unto the county of *C.* wherefore you could not replevy them to the said *A.* We being willing to oppose the malice of him the said *B.* in this matter, Do command you that without delay you take in *withernam* the cattle of the aforesaid *B.* in your bailiwick, and detain them until you can replevy to the said *A.* his cattle aforesaid, according to the custom of our realm, and according to the tenor of our commands heretofore directed to you, &c.

*Note, In the foregoing writ the cause which the sheriff returned on the pluries, must be set forth.*

*The form of a writ de Homine replegiando.*

GEORGE the Third, &c. To the Sheriff of *Surry*, greeting:  
 WE command you that justly and without delay you cause to be replevied *B. C. and D.* whom you yourse'f have taken and do keep so taken, as it is said, or whom *D. and E.* have taken and do keep so taken, as it is said, unless they were taken by the special command of us, or of our chief justice, for the death of man, or for our forest, or for any other right for which they may not be replevied according to the custom of *England*, that we may hear no more clamour thereon for want of justice. WITNESS, &c.

*Note, If this writ is not properly executed by the sheriff, the party may have an alias, and pluries, and after that an attachment. If the sheriff, on the alias, and pluries returns that the person who took the party claims him as his villain, then the plaintiff may have another writ of pluries.*

*The form of a pluries writ de Homine replegiando, where the party taken by the first writ is claimed by another.*

**G**EORGE the Third, &c. To the Sheriffs of London, greeting: Whereas we have oftentimes commanded you that justly, &c. *W.* whom *H.* took and now keeps so taken, as it is said, unless he was taken, &c. and be not replevifable, or that you should signify to us the cause wherefore, &c. and you have returned to us, that you went to the manor of the aforesaid *H.* there to replevy the aforesaid *W.* according to the tenor of our command aforesaid, but the aforesaid *H.* has not permitted the delivery of the body of him the said *W.* to be made, because he affirms him the said *W.* to be his villain and fugitive of his manor aforesaid, by claiming right of villinage and servitude, in the person of him the said *W.* with the dominion of his manor, &c. WE being unwilling that the aforesaid *W.* if he be a freeman, should be destitute of the common law by such taking and claim, command you, that if the aforesaid *W.* shall find you sufficient caution, &c. to be before us from the day of (the return of the writ) to answer the said *H.* if, &c. then cause him the said *W.* in the mean time to be replevied according to the tenor of our commands, &c. And nevertheless if the aforesaid *W.* shall make you secure touching his claim, &c. then put by gages, &c. the aforesaid *H.* that he be before us on the aforesaid day, to answer the aforesaid *W.* of the taking and claim aforesaid; and have you there the names of the pledges, and this writ, &c.

*Note, If the defendant claims the plaintiff as his ward, then on that returned on the pluries by the sheriff, the plaintiff shall have a special writ de Homine replegiando.*

*The form of a writ de Homine replegiando in nature of a writ of Audita querela.*

**G**EORGE the Third, &c. To our beloved &c. constable of our castle of Dover, &c. and to the warden of our Cinque ports, or to his lieutenant, greeting: WE command you, that having heard the complaint of *A.* whom *B.* took, and having taken keeps within the liberty of the ports aforesaid, as it is said, and having called before you the parties aforesaid, and having heard their reasons severally thereon, you cause him the said *A.* to be replevied, if he be replevifable according to the law and custom of the ports aforesaid, unless he be taken by the special command of us, or our chief justice, &c. that we may hear no more clamour thereon for want of justice, &c.

*Note,*



Note, The foregoing writ may be obtained when a person is taken within the Cinque ports. It is directed to the constable of Dover, and unto the warden of the Cinque ports, or his lieutenant.

*The form of a writ de Homine replegiando when a person is taken by Forest officers.*

**G**EORGE the Third, &c. To our beloved W. Lord D. our keeper of our forest on this side the Trent, or to his lieutenant of our forest of S. greeting: WE command you that, if A. and B. taken and detained in our forest of S. for trespass of venison by them done, as it is said, whereof they are indicted, shall each of them find you, to wit, 12 honest and lawful men of your bailiwick, who shall be mainprize to have them before our justices on \_\_\_\_\_ next after \_\_\_\_\_ in Eyre, at the pleas of the forest in the county of N. when they shall come into those parts to stand to the right touching the trespass aforesaid, then in the mean time that you deliver them the aforesaid A and B. in bail to the aforesaid 12 men as is before said, if according to the assize of the forest they shall be replevifable; and have you there the names of those 12 men and this writ. WITNESS, &c.

*The form of a writ de Homine replegiando to replevy a park out of the King's hands.*

**G**EORGE the Third, &c. To our beloved and faithful W. B. our keeper, &c. or to his lieutenant of the forest of S. greeting: WE command you that you cause to be replevied the park of F. of B. and C. (to the same F. until the coming of the justices of the pleas of the forest in the county aforesaid) which is within the boundaries of our said forest, and which is seized into our hands, because it is not inclosed according to the assize of the forest, as it is said, if it be replevifable according to the assize of the said forest. WITNESS, &c.

*The form of a writ de Replegiare de Averiis, where the distrainor takes more live catle in distress than one beast.*

**G**EORGE the Third, &c. To the Sheriff of *Middlesex*, greeting :  
WE command you that justly and without delay you cause to be replevied the cattle of *B.* which *D.* took and unjustly detains, as it is said, and afterwards thereupon cause him justly to be removed, that we may hear no more clamour thereupon for want of justice, &c.

*The form of a writ de Replegiare de averiis where the distrainor takes but one live beast in distress.*

**G**EORGE the Third, &c. To the Sheriff of *Middlesex*, greeting :  
WE command you that you cause to be replevied to *B.* his certain horse, or his certain labouring beast, or his ox, &c. (*as in the foregoing writ.*)

*The form of a writ de Replegiare de averiis where the distrainor takes a dead chattel in distress.*

**G**EORGE the Third, &c. To the Sheriff of *Surry*, greeting : WE command you that justly and without delay you cause to be replevied to *B.* his goods and chattels which *C.* took and unjustly detains, as it is said, and afterwards thereupon cause them justly to be removed, that we may have no more clamour thereupon for want of justice, &c.

*The form of a writ de Replegiare de averiis where the distrainor takes but one thing in distress which is a dead chattel.*

GEORGE the Third, &c. To the Sheriff of Surry, greeting: WE command you that justly and without delay you cause to be replevied to B. a certain net, or a certain swarm of bees, or a certain iron of and belonging to his mill, which A. took and unjustly detains, as it is said; and afterwards thereupon cause them justly to be removed, that we may hear no more clamour thereupon for want of justice, &c.

*Note, If the sheriff does nothing on the foregoing writ, the party may have an Alias, a Pluries, and then a Writ of Withernam.*

*The form of a writ de Pone, to remove a plea out of the county court into the Common pleas.*

GEORGE the Third, &c. To the Sheriff of Hertfordshire, greeting: AT the petition of the plaintiff put before our justices at Westminster on such a day, the plea which is in your county by our writ, between A. and B. of the cattle of him the said A. taken and unjustly detained, as it is said, and summon by good summoners the aforesaid B. that he be then there to answer the aforesaid A. thereupon: and have you there the summoners and this writ. WITNESS, &c.

*The form of a writ de Pone, when to remove a plaint out of the County court into the King's bench.*

GEORGE the Third, &c. To the Sheriff of Hertfordshire, greeting: AT the petition of the plaintiff put before us wheresoever we shall then be in England, the plea which is in your county by our writ between A. and C. of the goods and chattels of him the said A. taken and unjustly detained, as it is said, and summon by good summoners the aforesaid C. that he be then there to answer the aforesaid A. thereupon; and have you there the summoners, and this writ, WITNESS, Wm. Lord Mansfield, &c.

*Note,*



*Note, If the defendant would remove the plea in the County court on a replevin commenced by writ, he must shew to the court some evident cause for such removal*

*The form of a writ de Pone, where the replevin is in the County court by writ, with the cause shewn in such writ to ground the removal.*

**G**EORGE the Third, &c. To the Sheriff of *Hertfordshire*, greeting: PUT before our justices at *Westminster*, such a day, the plea which is in your county by our writ between *A.* and *B.* of the goods and chattels of him the said *A.* taken and unjustly detained, as it is said, and tell the said *A.* that he may be there if he will, to prosecute his plea thereupon against the aforesaid *B.* and have you there this writ, and the other writ. WITNESS, &c.

*The cause assigned for the removal of the replevin.*

AND because the aforesaid *B.* took the goods and chattels aforesaid within his *fee* for customs and services due to him, as it is said, if the cause be true, and the aforesaid *B.* requires it, let execution of this writ be done, and otherwise not.

*Note, Different causes may be shewn in this writ, according to the nature of the cause. Vide F. H. N. B. page. 170, 161.*

*The form of a writ of Recaption.*

**G**EORGE the Third, &c. To the Sheriff of *Middlesex*, greeting: *A.* has shewn to us that *Whereas* you had replevied to the same *A.* without our writ his cattle which *B.* took and unjustly detained, and had given a day until at our next county court, and had attached the aforesaid *B.* to answer thereupon to the aforesaid *A.* he the said *B.* after that attachment again took the cattle of the aforesaid *A.* on the same occasion that he before took them, and detains them as before, and because this is unjust and manifestly against our peace, WE command you that without delay you cause the cattle of the aforesaid *A.* to be delivered, until the chief plea between them be determined: And if you find that the aforesaid *B.* again took the cattle of the aforesaid *A.* on the same occasion that he before took them, and detains them as before, then have the body of the aforesaid *B.* before you

you and the keepers of the pleas of our crown at your next county court. And if by your bailiffs, by whom the cattle of the aforesaid *A.* were replevied, and by other honest and lawful men of your county, he can be convicted of a *second taking* for one and the same occasion, then to chastise him the said *B.* by amerciamment, that the chastisement may make others afraid of offending in the like case.

*The form of a writ of Recaption where the plaint is in the County court, by writ of Replevin.*

**G**EORGE the Third, &c. To the Sheriff of *Surry*, greeting: *H.* has shewn unto us that *Whereas* he lately brought to you our writ for replevying to him his cattle which *M.* took and unjustly detains, and you have replevied those cattle to him the said *H.* and given to him day until at our next county court; and had attached the aforesaid *M.* to answer thereupon to the aforesaid *H.* He the said *M.* after that attachment, &c. (*as in the foregoing writ of Recaption.*)

*The form of a writ of Recaption where the plaint is by writ, and removed out of the county court by Pone into the C. B.*

**G**EORGE the Third, &c. To the Sheriff of *Kent*, greeting: *H.* has shewn unto us that *Whereas* he had lately brought to you our writ of replevying to him his cattle which *M.* took and unjustly detains, and you had replevied those cattle to the said *H.* and given him day until at your next county court, and you had attached the the aforesaid *M.* to answer to the aforesaid *H.* and afterwards **WE** commanded that plaint to be put before our justices at *Westminster*, such a day last past; the same *M.* pending the plea before the same justices, again took the cattle of the aforesaid *H.* on the same occasion which he before took them, and detains them as before, and does not permit justice to be done, in contempt of our commands; and because this is unjust, and manifestly against our peace, **WE** command you that if the aforesaid *H.* shall make you secure touching the prosecuting his claim, &c. then put by gages, the aforesaid *M.* that he be before our justices aforesaid, to answer to us concerning the contempt aforesaid, and to the said *H.* of the trespass aforesaid; and have you there the names of the pledges, and this writ, and cause those cattle to be replevied to the same *H.* **WITNESS,**  
&c.

*The*

*The form of a writ of Recaption where the plaint is by writ, and removed by Pone into the C. B. and the party first making a distress on the other, distrains again.*

**G**EORGE the Third, &c. To the Sheriff of *Essex*, greeting: *S.* has shewn unto us that *Whereas* he lately brought to you our writ of replevyng to him his certain cow which *J.* and *H.* have taken and unjustly detained, and the bailiffs of the liberty of *N.* (whom you have made to have the return of our writ aforesaid) replevied that cow to the same *S.* and attached the aforesaid *H.* and *J.* to answer thereupon to the aforesaid *S.* and afterwards **WE** commanded you that the plaint be put before our justices at *Westminster*, such a day, in the ——— year of our reign, the aforesaid *J.* and *H.* have again the cattle of the aforesaid *S.* pending the plea aforesaid, before the bailiffs of the aforesaid liberty of *N.* before whom that plaint according to the liberties granted to *J.* lord of the same liberty, by the same justices is returned to be pleaded, &c.

*The form of a writ of Recaption where a person sued a replevin in a Hundred court, and the party who made the first distress on the other, distrains again.*

**G**EORGE the Third, &c. To the Sheriff of *Oxford*, greeting: *A.* has shewn unto us that *Whereas* *B.* had taken and unjustly detained the cattle of the aforesaid *A.* and the bailiffs of *M.* and *N.* on the complaint of the said *A.* (as the custom is) had replevied those cattle to the same *A.* and given to him a day until at the next *wapentake* of their aforesaid lord of *N.* and had attached the aforesaid *B.* to answer to the aforesaid *A.* on this, and afterwards **WE** commanded you, that having taken with you, &c. you should go to the aforesaid *wapentake*, and in full *wapentake*, &c. without our writ between him the said *A.* and the aforesaid *B.* of the aforesaid cattle of him the aforesaid *A.* taken, &c. and that record, &c. the same *B.* pending the plea, &c. on the same occasion on which they were first taken, &c. put, &c. that, &c.



*The forms of sundry special pleadings in replevin.**For taking a mare.*

*Staffordshire* *J.* I. and *J. H.* were summoned to answer to *J. F.* of to wit. *J.* a plea, wherefore they took one mare of him the said *J.* and unjustly detained her against gages and pledges, &c. And whereupon the said *J.* by *J. L.* his attorney complains, that the aforesaid *I.* and *J.* on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of our lord the now King of *England*, &c. at *S.* in county aforesaid, in a certain place called \_\_\_\_\_, took the mare aforesaid of him the said *J.* and unjustly detained her, against gages and pledges, until, &c. and whereupon the said *J.* says that he is injured, and has damage to the value of \_\_\_\_\_ pounds, and thereupon he brings suit, &c.

And the aforesaid *I.* and *J. H.* by *T. C.* their attorney, come and defend the force and injury when, &c. and as bailiffs of *R. F. Gent.* well acknowledge the taking of the mare aforesaid, in the place in which, &c. and justly, &c. because they say, that the same place in which the taking of the mare aforesaid is supposed to be done, contains, and at the said time when the same taking of the mare is supposed to be done, did contain in itself one acre of land, with the appurtenances, in *S.* aforesaid; which said town of *S.* is, and from the same time when, &c. and also from time whereof the memory of man is not to the contrary, was within the manor of *S.* with the appurtenances, in the county of *S.* aforesaid, of which said manor, with the appurtenances, the aforesaid *R.* is, and at the said time when, &c. and long before was seised in his *demefne* as of fee; and the said *R.* and all those whose estate he has in the same manor, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and been accustomed to have a court leet or view of frankpledge of the same manor, and whatsoever belongs to the view of frankpledge, of all the inhabitants and residants within that manor, before his steward of the same court for the time being, in every year within the month next after the feast of *St. Michael the archangel*, to be holden at that manor yearly, as to the said manor, with the appurtenances belonging: And they the said *I.* and *J.* further say, that within the manor aforesaid there is had, and from time whereof the memory of man is not to the contrary, there has been had a certain custom, that the jurors charged and sworn to enquire of, and present those things which belong to the court-leet and view of frankpledge aforesaid, at the court-leet, and view of frankpledge of the manor aforesaid, holden at that manor within the month next after the feast of *St. Michael the archangel* yearly, have chosen, and for all the time

abovesaid have been accustomed to choose one fit man of the inhabitants within the manor aforesaid, to be constable of the constablewick of S. aforesaid, to serve in that office for one year, which said man so chosen, took upon himself that office, and for all that time aforesaid was used and accustomed to take it, and has taken and been accustomed to take an oath for the due execution of that office, under a reasonable pain, for the time aforesaid, by the jurors aforesaid at such court-leet and view of frank-pledge in that behalf imposed. And the said I. and J. further say, that the aforesaid R. being lord of the manor aforesaid, with the appurtenances, and being seised of the same in form aforesaid, at the court-leet or view of frank-pledge of that manor, holden at the said manor within the month next after the feast of *St. Michael the archangel*, to wit, on the ——— day of ———, in the ——— year of the reign of the lord the now King, before H. F. Gent. then steward of that court of him the said R. the aforesaid J. F. then and long before being an inhabitant within the manor aforesaid, to wit, at S. aforesaid, and being a fit man to be constable of the aforesaid constablewick of S. aforesaid, by E. T. T. G. J. C. J. A. J. S. W. M. W. R. M. W. T. S. J. M. J. S. J. A. and J. D. honest and lawful men and inhabitants within the manor aforesaid, and then and there in the same court sworn and charged to inquire and present those things, which to the court-leet and view of frankpledge did belong, in due manner, and according to the custom aforesaid, was chosen to be constable of the constablewick of S. aforesaid, to serve in that office for one year then next following: And the said jurors then and there in the same court did order that the said J. should make his oath for the due execution of his office aforesaid, under the pain of forfeiting 40 s. whereof the aforesaid J. F. immediately afterward, to wit, the same day and year had notice, yet the said J. has not made his oath for the due execution of the office of constable aforesaid, nor has executed or taken upon himself that office, but he to do those things then, and often afterwards, there, absolutely refused; by which, afterwards and before the time when, &c. to wit, at the court-leet or view of frank-pledge of the manor aforesaid of the said R. at that manor, within the month next after the feast of *St. Michael the archangel*, to wit, on the ——— day of ———, in the ——— year of the reign of the said lord the now King, holden before the said H. F. then steward of him the said R. of that court, by E. T. &c. honest and lawful men, then inhabitants within the manor aforesaid, then and there in the same court sworn and charged to inquire and present those things which to the court leet or view of frank-pledge aforesaid did belong, it was presented, that the aforesaid J. F. for that he was duly chosen constable of the constablewick of S. aforesaid, at the last leet holden for the manor aforesaid, and under pain of 40 s. upon him imposed, he was ordered to take upon himself and execute that office, and to make his oath in form aforesaid for the due execution of the said office, which things, or any thing thereof, he has not done, therefore he has forfeited to the lord of the ma-

nor aforesaid the said 40 s. for the pain aforesaid, then to be paid to the lord of the manor aforesaid, as by the record thereof in the power of the said steward of the court of the manor of him the said R. aforesaid at that manor remaining, more fully appears: And because the said 40 s. for the pain aforesaid to him the said R. being lord of the manor aforesaid, as before is set forth, at the said time when, &c. was in arrear, and not paid, they the said I. and J. as bailiffs of the said R. well acknowledge the taking of the mare aforesaid in the said place in which, &c. and justly, &c. for the said 40 s. for the pain or amerciamment aforesaid so being in arrear, and not paid to the said R. and within the manor aforesaid, &c.

And the aforesaid J. says, that by any thing by the aforesaid I. and J. above in the cognizance aforesaid in pleading alledged, they the said I. and J. ought not to acknowledge the taking of the mare aforesaid in the said place, &c. to be just, because he says, that the plea aforesaid by them the said I. and J. in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law for the acknowledging the taking of the mare aforesaid in the said place in which, &c. to be just, and that he, to that cognizance in manner and form above made and pleaded, has no necessity, nor is he bound by the law of the land to answer; and this he is ready to verify: Wherefore for want of a sufficient plea in this behalf, he the said J. prays judgment and his damages, by occasion of the taking and unjustly detaining of the mare aforesaid, to be adjudged to him, &c.

And the aforesaid I. and J. say, that the plea aforesaid by them the said I. and J. in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law for them the said I. and J. to acknowledge the taking of the said mare in the said place in which, &c. to be just; which said plea, and the matter in the same contained, they the said I. and J. are ready to verify and prove, as the court, &c. And because the said I. to that cognizance has not pleaded or answered, nor the same has hitherto in any manner denied, they the said I. and J. pray judgment and a return of the mare aforesaid, together with their damages, costs and charges, according to the form of the statute in such case made and provided, to be adjudged to them, &c. And because the court of the said lord the King now here, is not yet advised of the giving of their judgment of and upon the premises, day is thereupon given to the parties aforesaid, before the lord the King from the day of ———— wheresoever, &c. to hear their judgment of and upon the premises aforesaid, for that the court of the said lord the King now here are not yet advised, &c.



*For taking cattle.*

*Yorkſhire* **R.** *B.* late of *S.* in the county aforeſaid, yeoman, *G. B.* to wit. **R.** late of *G.* in the county aforeſaid, yeoman, *J. Y.* late of *S.* aforeſaid, in the county aforeſaid, yeoman, and *G. T.* late of *S.* aforeſaid, in the county aforeſaid, yeoman, were ſummoned to answer to *M. H.* widow, of a plea wherefore they took the cattle of her the ſaid *M.* and unjuſtly detained them againſt gages and pledges, &c. And whereupon the ſaid *M.* by *J. D.* her attorney, complains, that the aforeſaid *R. G. J. Y.* and *G.* on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the lord the now King, at *T.* in a certain place there called the *Stable*, took the cattle of her the ſaid *M.* to wit, *four horſes*, and unjuſtly detained them, againſt gages and pledges, until, &c. Whereupon ſhe ſays that ſhe is injured, and has damage to the value of \_\_\_\_\_ pounds, and thereupon ſhe brings ſuit, &c.

And the aforeſaid *R. B. G. B. J. Y.* and *G. T.* by *W. B.* their attorney, come and defend the force and injury when, &c. and as bailiffs of *R. K.* Gent. executor of the will of *F. K.* Eſq; deceased, well acknowledge the taking of the cattle aforeſaid in the ſaid place in which, &c. and juſtly, &c. becauſe they ſay, that the ſame place in which the taking of the cattle aforeſaid is ſuppoſed to be done contains, and at the ſaid time when the taking of thoſe cattle is ſuppoſed to be done, did contain in itſelf one ſtable, with the appurtenances, in *T.* aforeſaid, which ſaid ſtable, with the appurtenances, is, and at the ſaid time when, &c. and alſo from time whereof the memory of man is not to the contrary, has been parcel of the manor of *T.* otherwiſe *T.* with the appurtenances, in the county aforeſaid; of which ſaid manor, with the appurtenances, whereof the ſaid place in which, &c. is, and at the ſaid time when, &c. was, and alſo for all the time aforeſaid has been parcel, the right honourable *W.* late earl of *S.* deceased, in his life-time long before the ſaid time when, &c. to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the lord the late King of *England*, &c. (among other things) was ſeiſed in his *demeſne* as of fee; and being ſo ſeiſed thereof, the ſaid late earl afterwards in his life-time, and before the ſaid time when, &c. to wit, on the ſaid \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of the lord the late King aboveſaid, at *T.* aforeſaid, by his certain writing indented, then and there made between the ſaid late earl, by the name of the right honourable *W.* earl of *S.* Knight of the moſt noble order of the Garter, and one of His Ma- jeſty's privy council, of the one part, and the ſaid *F. K.* in his life-time, by the name of *F. K.* of the pariſh of \_\_\_\_\_ in the county \_\_\_\_\_

county of \_\_\_\_\_, Esq; of the other part; one part of which, sealed with the seal of the said late earl, the aforesaid R. B. G. Y. and G. bring here into court, the date whereof is the same day and year, for and in consideration of the good and faithful service of the aforesaid F. K. then done, and then afterwards to be done and performed, for the said late earl, and also of five shillings of good and lawful money of *England* to him the said late earl then in hand paid, and for divers other good causes and considerations him thereunto moving, had given and granted, and by the same writing indented for himself and his heirs gave and granted to the said F. K. a certain annuity or yearly rent-charge of \_\_\_\_\_ pounds of good and lawful money of *England*, to be issuing and payable out of all that manor or lordship of T. otherwise T. aforesaid, with all and singular its rights, members and appurtenances, in the aforesaid county of \_\_\_\_\_, and out of all and singular the messuages, cottages, lands, tenements and hereditaments whatsoever, within the towns, villages, parishes, hamlets, precincts or territories of \_\_\_\_\_, &c. and every or any of them in the said county of \_\_\_\_\_, and out of all and singular the messuages, cottages, houses, edifices, buildings, barns, stables, orchards, gardens, lands, tenements, meadows, pasture, moors, marshes, rents, reversions, services, profits, commodities, emoluments and hereditaments whatsoever, with the appurtenances, to the said manor or lordship belonging, or before used, taken reputed, occupied or enjoyed as part or parcel thereof; To have, hold, and yearly to receive, perceive and take the said annuity or yearly rent-charge of \_\_\_\_\_ pounds to him the said F. K. and his assigns, from and immediately after the date of the same writing, for and during the term of his natural life, to be paid at two feasts or days in the year, that is to say, on the feast of \_\_\_\_\_, and feast of \_\_\_\_\_ by equal portions; the first payment to begin and be made upon the feast of \_\_\_\_\_ next ensuing the date of the said writing. And if it should happen that the said annuity or yearly rent-charge of \_\_\_\_\_ pounds, or any part thereof, should be in arrear or unpaid in part or in the whole, for the space of 20 days next after any of the said feasts, in which it ought to be paid as aforesaid, being lawfully demand, that then and in such case it should be lawful to and for the said F. K. or his assigns, into the said manor or lordship, lands, tenements and hereditaments before mentioned, or into any part or parcel thereof, to enter and distrain for the said annuity or yearly rent-charge of \_\_\_\_\_ pounds, or such part thereof as should happen to be in arrear and unpaid; and the distress or distresses then and there found, to take, lead, chase, carry away and impound, and impounded to detain and keep until he or they should be fully satisfied and paid the said annual rent and all arrearages thereof, if any should be, as by the said writing indented here brought into court (among other things) more fully appears: By virtue of which said gift and grant, the said F. K. was seised of the aforesaid annuity or yearly

yearly rent of ——— pounds in his *demesne* as of freehold for the term of his life; and thereupon being so seised of the rent aforesaid, the said *F. K.* afterwards, and long before the said time when, &c. to wit on the ——— day of ———, in the ——— year of the reign of the lord the now King of *England*, &c. at *T.* aforesaid made his last will and testament in writing, and by the same will made and appointed the said *R. K.* sole executor thereof; and afterwards and after the feast of ———, in the ——— year of the reign of the said lord the King aforesaid, and before the said time when, &c. to wit, on the ——— day of ———, in the same year, at *T.* aforesaid the said *F. K.* died seised of such his estate of and in the rent aforesaid; after whose death, and before the said time when, &c. to wit, on the ——— day of ——— in the ——— year aforesaid, at *T.* aforesaid, the said *R. K.* took upon himself the burthen of the execution of the will aforesaid, and proved the same will according to the ecclesiastical laws of this kingdom of *England*, and the said *R.* was executor of the will aforesaid at the time when, &c. and always after the death of the said *F. K.* hitherto has been, and yet is so. And because ——— pounds of the rent aforesaid for 17 years, ending at the said feast of ——— in the ——— year aforesaid to the said *F. K.* in his life-time, and to the said *R. K.* after the death of him the said *F.* for the space of 20 days next after that feast at the same time when, &c. were in arrear unpaid, they the said *R. B. G. B. J. Y.* and *G.* as bailiffs of the said *R. K.* executor of the said will of the said *F.* well acknowledge the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. in parcel of the lands and tenements aforesaid (as a distress of the said *R. K.* as executor of the said will of the said *F. K.* in form aforesaid, according to the form of the statute in such case made and provided) charged and bound for the said ——— pounds of the rent aforesaid being in arrear; and the said *R. B. G. J.* and *G.* bring here into court the letters testamentary of the said *F. K.* whereby it sufficiently appears to the court here that the said *R. K.* is executor of the will aforesaid, and ought to have the administration, &c.

And the said *M. H.* says, that the said cognisance of the aforesaid *R. G. J.* and *G.* above made, and the matter in the same contained, are not sufficient in law for them justly to acknowledge the taking of the cattle aforesaid in the said place in which, &c. and that she to that cognisance in manner and form aforesaid made, has no necessity, nor is she bound by the law of the land to answer; and this she is ready to verify: Wherefore for want of a sufficient cognisance in this behalf the aforesaid *M. H.* prays judgment and her damages, by occasion of the taking and unjustly detaining the said cattle, to be adjudged to her, &c. And for cause of demurrer in law upon the said cognisance the said *M.* according to the form of the statute in such case made and provided, shews, and to the court here demonstrates



states this cause following, to wit, for that it does not appear by the said cognisance that the said ——— pounds were ever demanded, or that any part thereof was ever demanded, &c.

And the said *R. B. G. B. J. Y. and G. T.* since they have sufficient matter in law in their said recognisance to acknowledge justly the taking of the cattle aforesaid in the said place in which, &c. have above alledged, which they are ready to prove; which said matter the said *M. H.* has not denied, nor in any manner answered to it, but that averment has wholly refused to admit, pray judgment and a return of the cattle aforesaid, together with their damages, costs and charges by them about their suit in this behalf laid out, according to the form of the statute, to be adjudged to them, &c.

### *For taking Sheep.*

*Northamptonshire W. C.* the younger and *R. V.* were summoned to wit, answer *J. A.* Gent. of a plea wherefore they took one sheep of him the said *J.* and unjustly detained the same, against gages and pledges, &c. And whereupon the said *J.* by *E. B.* his attorney complains, that the aforesaid *W.* and *R.* on the ——— day of ———, in the ——— year of the reign of the lord the now King at *D.* in a certain place there called the *High-street*, took the sheep aforesaid, and unjustly detained the same, against gages and pledges, until, &c. whereupon he says that he is injured, and has damage to the value of ——— pounds; and thereupon he brings suit, &c. pledges to prosecute *J. D.* and *R. R.*

And the said *W.* and *R.* by *T. P.* their attorney come and defend the force and injury when, &c. And as bailiffs of *D.* earl of *N.* well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c. because they say that the said place in which the taking of the sheep aforesaid is supposed to be done, was the soil and freehold of him the said *D.* earl of *N.* and because the sheep aforesaid at the said time when, &c. was in the said place in which, &c. feeding on the grass there then growing, and there doing damage to the said earl, they the said *W.* and *R.* as bailiffs of him the said earl, and by his command, at the said time when, &c. well acknowledge the taking of the sheep aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.

And the said *J. A.* says, that the said *W. C.* the younger, and *R. V.* for the reason before alledged, as bailiffs of the said *D.* earl of *N.* ought not to acknowledge the taking of the said sheep of him the said *J.* in the place aforesaid in which, &c. to be just, because he says, that long before the said earl of *N.* had any thing in the said place

place in which, &c. the lady *Ann*, late Queen of *England*, was seised in her *demesne* as of fee in right of her duchy of *Lancaster* of and in the manor of *D.* in the said county of *N.* with the appurtenances, whereof the said place in which, &c. then was parcel; and being so seised thereof, she the said Queen *Ann* on the — day of — in the of her year reign, by her letters patent sealed under her great seal of *England*, bearing date at *Westminster* the said — day of — in the — year of her reign abovesaid, of her special grace, for her heirs and successors, gave and granted to the bailiff, burgesses and commons of the borough of *D.* in the county of *N.* and their successors, that they and their successors from thenceforth for ever should have and hold, and should be able to have and hold within the borough aforesaid and the precincts and liberties thereof, two fairs or marts there to be holden and kept yearly, that is to say, one fair on — next after the feast of —, and continually to last for *two days* from thence next following, and one other fair upon the feast of — and continually to last for *two days* from thence next following, together with a court of *piepowder* together with all profits and commodities whatsoever forth-coming, happening, arising or contingent from such fairs or marts, and with all liberties and free customs to such markets, fairs or marts belonging or appertaining, as by the letters patent aforesaid, which the said *J.* brings here into court, sealed with the great seal of *England*, more fully appears: By virtue of which said grant, the said bailiff, burgesses and commons of the borough of *D.* aforesaid, and their successors, were seised and yet are seised as of fee and right in right of their corporation aforesaid of and in one fair, yearly holden in the said place in which, &c. called the *High-street*, being within the borough of *D.* aforesaid, on — next after the feast of —, and continually for *two days* from thence next following, and of and in one other fair yearly there holden on the feast day of —, and continually for *two days* from thence next following, with all liberties and free customs to such fairs belonging: And the said *J.* further says, that at the fair holden at the said place in which, &c. within the said borough of *D.* aforesaid, on the — day of —, in the — year of the reign of the lord the now King abovesaid, — next after the feast of — last past, he the said *J.* then and there in the said place in which, &c. called the *High-street* within the said borough of *D.* aforesaid, in the full and open fair there bought of a certain person unknown the sheep aforesaid, and then and there paid the customary toll payable for all things bought in that fair to the aforesaid bailiff, burgesses and commons of the borough of *D.* aforesaid, upon which the sheep aforesaid, being then and there lawfully in the custody of him the said *J.* they the said *W.* and *R.* then took that sheep of him the said *J.* in the said place in which, &c. in the said fair, and unjustly detained it, in manner and form as the said *J.* above complains against them; and this the said *J.* is ready to verify: Wherefore since the  
said

said *W.* and *R.* have both acknowledged the taking of the sheep aforesaid, he the said *J.* prays judgment and his damages, by reason of the taking and unjustly detaining of the said sheep, to be adjudged to him, &c.

And the aforesaid *W. C.* and *R. V.* say, that the plea of the said *J. A.* above pleaded in bar of the cognizance aforesaid is not sufficient in law to preclude them the said *W.* and *R.* as bailiffs of the aforesaid *D.* earl of *N.* from the acknowledging the taking of the said sheep in the place aforesaid, in which &c. to be just; and that they have no necessity, nor are they bound by the law of the land to answer to that plea in manner and form aforesaid pleaded; and this they are ready to verify: Wherefore for want of a sufficient plea of him the said *J.* they the said *W.* and *R.* pray judgment, and a return of the sheep aforesaid, together with their damages, &c. to be adjudged to them, &c.

And the said *J.* says that for ought that he has above alledged there is sufficient matter in law for him the said *J.* to have his said action to be maintained against the said *W.* and *R.* which said matter they the said *W.* and *R.* do not deny nor answer any thing to the same, but wholly refuse to admit the said *averment*; and he therefore prays judgment and his damages, by reason of the taking and unjustly detaining of the said sheep, to be adjudged to him, &c.

And because the justices here will advise themselves of and concerning the premises before they give judgment thereupon, day is given to the parties aforesaid here until *the morrow of the holy Trinity*, to hear their judgment thereon, for that the said justices here are not thereof yet, &c.

*For a Brass Pan.*

Cornwall, *J. C.* Gent. and *L. B.* were summoned to answer *W.* (to wit) *J. T.* of a plea wherefore they took one *brass pan* of him the said *W.* and unjustly detained the same, against gages and pledges, &c. And whereupon the said *W.* by *P. H.* his attorney complains that the aforesaid *J.* and *L.* on the ——— day of ——— in the ——— year of the reign of our Lord the now King &c. at the parish of *St. Agnes*, in a certain place there called the *Kitchen*, took one brass pan of him the said *W.* and unjustly detained the same against gages and pledges, until, &c. whereupon he says that he is injured, and has damage to the value of *one hundred shillings*, and thereupon he brings suit, &c.



And the aforesaid *J.* and *L.* by *J. F.* their attorney come and defend the force and injury when, *Ec.* and as bailiffs of *W. M.* Esq; well acknowledge the taking of the said brass pan in the place in which, *Ec.* and justly, *Ec.* because they say, before the said time when the taking of the said brass pan is supposed to be done, one *H. T.* Esq; was seised of a certain messuage and fifty acres of land called *Trewartha* with the appurtenances, in the parish of *St. Agnes* aforesaid in the county aforesaid, whereof the aforesaid place called *the kitchen* is, and at the same time when, *Ec.* was parcel, in his *demesne* as of fee, and held the tenements aforesaid of the aforesaid *W. M.* as of the manor of *M.* with the appurtenances in the same county by fealty, and the rent of *four shillings* to be paid every year at the feast of *St. Michael the archangel*, and so by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, of which said service the aforesaid *W. M.* was seised by the hands of the said *H. T.* as by the hands of his very tenant, that is to say, by fealty and suit of court aforesaid, as of fee and right, and of the rent aforesaid in his *demesne* as of fee; and because of *four shillings* for the rent aforesaid for one year ending at the feast of *St. Michael the archangel* in the ——— year of the reign of our now Lord the King to the aforesaid *W. M.* at the same time when, *Ec.* were in arrear not paid, and suit of court at the court of the said *W. H.* of his manor aforesaid at the parish of *St. Agnes* within the said manor, on the ——— day of ——— in the ——— year of the reign of the said Lord the King aforesaid, holden for the said manor, was not done, they the said *J.* and *L.* as bailiffs of the said *W. M.* well acknowledge the taking of the brass pan aforesaid in the said place in which, *Ec.* for the rent aforesaid so being in arrear, and for the suit of court so not done, as in parcel of the tenements aforesaid with the appurtenances, holden of the said *W. M.* in manner aforesaid, and justly, *Ec.* as within his *fee* and *demesne*, *Ec.*

And the aforesaid *W. T.* says that the said *J.* and *L.* as bailiffs of the said *W. M.* ought not to acknowledge the taking of the said brass pan in the said place in which, *Ec.* to be just, because protesting that the said *W. M.* was not seised of the services aforesaid as he above supposes; he the said *W. T.* for plea says, that the aforesaid *H. T.* held the tenements aforesaid of the said *W. M.* as of his manor of *Mithian* aforesaid, by the rent of *four shillings* for every year, to be paid at the feast of *St. Michael the archangel* only; without this, that the aforesaid *H. T.* held the tenements aforesaid of the aforesaid *W. H.* as of his manor aforesaid with the appurtenances, by fealty, and the rent of *four shillings* to be paid every year at the feast of *St. Michael the archangel*, and also by doing service and suit at the court of the manor aforesaid, to be holden

holden twice in the year at that manor, as the aforesaid *J.* and *L.* have above alledged; and this he is ready to verify.

Wherefore since the said *J.* and *L.* have above acknowledged the taking of the said brass pan in the said place in which, &c. he the said *W. T.* prays judgment and his damages, by occasion of the taking and unjustly detaining the said brass pan, to be adjudged to him, &c.

And the aforesaid *J.* and *L.* as before say, that the said *H. T.* held the tenements aforesaid of the aforesaid *W. M.* as of his manor aforesaid with the appurtenances, by fealty and the rent of *four shillings* to be paid every year at the feast of Saint *Michael the archangel*, and also doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as the said *J.* and *L.* have above in pleading alledged; and of this they put themselves upon their country, and the aforesaid *W.* does so likewise: Therefore the sheriff is commanded that he cause to come here from the day of the holy Trinity in three week twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

At which day the jury between the parties aforesaid of the plea aforesaid was respited between them here until this day, viz, from the day of Saint Michael in three weeks then next following, unless the justices of our Lord the King, assigned to take the *assizes* in the county aforesaid, by form of the statute, &c. on Wednesday the \_\_\_\_\_ day of \_\_\_\_\_ next, at *Launceston* in the county aforesaid, should before come.

And now here at this day come as well the said *W.* as the said *J.* and *L.* by their attornies aforesaid, and the said justices assigned to take the *assizes*, before whom, &c. have sent here their record in these words.

Afterward, on the day and at the place within contained, before *J. P.* knight, one of the justices of the Lord the King of the bench, and *T. R.* knight, one of the justices of the said Lord the King of the bench, being both justices of the said Lord the King assigned to take the *assizes* in the county of *Cornwall*, according to the form of the statute, &c. came the within named *W. T.* by his attorney within contained, and the within written *J. C.* gent. and *L. B.* although solemnly called did not come, but made default; therefore the jury, whereof mention is within made, is taken against them by default: and the jurors of that jury being called, some of them, that is to say, *E. V.* *P. S.* and *F. K.* came and are sworn upon that jury: and because the jurors of the same jury did not appear, therefore others of the by-standers, chosen by the sheriff of the county

aforesaid for this purpose, at the request of the said *W. T.* and by the command of the justices aforesaid are newly appointed, whose names are affixed in the panel within written, according to the form of the statute in such case lately made and provided; and the jurors so newly appointed, that is to say *G. W. G. R. E. M. R. C. J. B. N. L. J. G. G. B. W. P.* being called likewise came, who being chosen, tried and sworn to speak the truth concerning the matters within contained, together with the other jurors aforesaid impanelled and sworn to that purpose, say upon their oath, that long before the within written time when the taking of the within written brass pan is within supposed to be done, the manor of *Mithian* in the county within written, was an ancient manor, of which said manor the within named *W. M.* Esq; is, and at the within written time of the taking of the within written brass pan was seised in his *demesne* as of *fee*.

And the jurors aforesaid further say upon their oath aforesaid, that within the manor aforesaid, from time whereof the memory of man is not to the contrary, there has been an ancient court holden there before the steward of the manor aforesaid for the time being twice in the year, and there have been several freehold tenants and several suitors who have done suit at the court aforesaid of the same manor, and that the within named *H. T.* Esq; and all his ancestors were freehold tenants of the same manor, and have holden the messuage and tenements within mentioned in the avowry within written of the aforesaid *W. M.* and his predecessors, lords of the same manor, as of his manor of *Mithian* aforesaid with the appurtenances, by fealty, and the rent of *four shillings* to be paid at the feast of *St. Michael the archangel*, and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as within mentioned in the avowry within written.

And the jurors further say upon their oath aforesaid, that, in the within manor of *Mithian* aforesaid there is, and for *twenty years* now last past there has been only one freehold tenant and free suitor, to wit, the aforesaid *H. T.* but at the within written time when, &c. and also from time whereof the memory of man is not to the contrary there was, have been, and now are, several customary and conventional tenants and suitors of the same manor.

And the jurors aforesaid further say upon their oath aforesaid, that for rent and service in arrear the aforesaid *J. C.* and *L. B.* as bailiffs of the said *W. M.* Esq; lord of the manor of *Mithian* aforesaid within written, at the time when, &c. took and detained the brass pan within mentioned in the declaration within written.

But whether on the whole matter aforesaid, found by the jurors aforesaid, in form aforesaid, the said *H. T.* held the tenements within



within mentioned in the cognizance within written of the aforesaid *W. M.* as of his manor aforesaid with the appurtenances, by fealty, and the rent of *four shillings* to be paid every year at the feast of *Saint Michael the archangel*, and also by doing service and suit at the court of the manor aforesaid to be holden twice in the year at that manor or not, the jurors aforesaid are wholly ignorant, and thereupon they pray the advice and consideration of the justices of the court of the said Lord the now King here of the bench, &c.

And if upon the whole matter found by the jurors aforesaid in form aforesaid, it shall seem to the justices of the court of our said Lord the now King of the bench here, that the said *H. T.* did not hold the tenements aforesaid of the said *W. M.* as of his manor aforesaid with the appurtenances, by fealty, and the rent of *four shillings* to be paid every year at the feast of *Saint Michael the archangel*, and also by doing service and suit at the court of the manor aforesaid to be holden twice in the year at that manor, then they the said jurors say upon their oath aforesaid, that the said *H. T.* did not hold the tenements aforesaid of the said *W. H.* as of his manor aforesaid with the appurtenances, by fealty and the rent of *four shillings* to be paid every year at the feast of *Saint Michael the archangel* and also by doing service and suit at the court of the manor aforesaid, to be holden twice in the year at that manor, as the said *J. C.* and *L. B.* within, in pleading have alledged; and then they assess the damages of him the said *L. T.* by the occasion within written, besides his costs and charges by him laid out about his suit in this behalf, to *two pence*, and for those costs and charges to *40 shillings*; but if, &c.

*For taking a Mare on the Highway.*

*Northampton*, to wit. *J. B.* was summoned to answer to *S. C.* in a *J.* plea, why he took a mare of him the said *S.* and unjustly detained it, against surety and pledges, &c. And whereupon the same *S.* by *W. L.* his attorney complains, that the said *J.* on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of the Lord *George* the second late King of *England*, &c. at *H.* in the county aforesaid, in a certain place called the *King's highway*, a mare of him the said *S.* took, and unjustly detained it against sureties and pledges, until, &c. whereby the same *S.* says that he is prejudiced, and has damage to the value of \_\_\_\_\_ pounds; and therefore he produces the suit, &c.

*And*

And the said *J. B.* by *J. B.* his attorney, comes and defends the force and injury when, *Ec.* and as bailiff of the most noble *W. Lord L.* well acknowledges the taking of the mare aforesaid the said time when, *Ec.* in a certain place called the *King's highway*, and justly, *Ec.* because he says, that the said place contains, and at the said time when, *Ec.* did contain in itself, *half a rod of land* with the appurtenances in *H.* aforesaid; which said half rod of land, long before the said time when, *Ec.* was parcel of a certain ancient messuage in *H.* aforesaid; which said messuage, long before the said time when, *Ec.* was the soil and freehold of the said *W. Lord L.* and because the mare aforesaid, the said time when, *Ec.* was in the said half rod of land in which, *Ec.* doing damage there, the said *J.* as bailiff of the said *W. Lord L.* well acknowledges the taking of the mare aforesaid in the place in which, *Ec.* and justly, *Ec.* doing damage, *Ec.* without that, that the said *J.* took the mare aforesaid in a certain place called the *King's highway*, as the said *S.* against him has declared: and this he is ready to verify: Wherefore he prays judgment, and a return of the mare aforesaid, to be adjudged to him, *Ec.*

And the said *S.* says, that the said *J. B.* as bailiff of the most noble *W. Lord L.* the taking the mare aforesaid ought not to acknowledge just, because he says, that he the said *J. B.* at the said time when, *Ec.* took the mare aforesaid in the said place then called the *King's highway*, in manner and form as the said *S.* above in declaring has alledged; and this he prays may be inquired of by the country.

And the said *J.* says, that he to the plea of the said *S.* above in replying pleaded has no necessity, nor is by the law of the land obliged in any manner to answer, because he says, that the same plea is not sufficient in law to maintain his declaration aforesaid; and this he is ready to verify: wherefore for want of a sufficient replication in this behalf, the same *J.* as before prays judgment, and that the declaration aforesaid may be quashed.

And the said *S.* for aught that he has before alledged has sufficient matter in law for him the said *S.* to maintain his action and declaration as aforesaid, which he is ready to verify; which said matter the said *J.* does not deny, nor to the same in any wise answer, but that averment has altogether refused to admit; wherefore he prays judgment, and his damages by reason of the taking and unjust detention of the mare aforesaid, to be adjudged to him, *Ec.*

And because the justices here will advise themselves of and upon the premises before they give judgment thereon, day is given to the parties aforesaid here until from the day of \_\_\_\_\_ in \_\_\_\_\_ weeks to hear their judgment thereon, because the same justices here thereof

thereof are not yet, &c. On which day here comes as well the said S. as the said J. by their attornies aforesaid; and hereupon the premises being seen, and by the justices here more fully understood, it seems to the same justices here, that the plea of the said S. above in replying pleaded is sufficient in law to maintain his declaration aforesaid, as the said S. has above alledged; wherefore the said S. ought to recover his damages by reason of the premises against the said J.

But because it is unknown what damages the said S. has sustained by reason of the premises, the sheriff is commanded, that by the oath of twelve good and lawful men of the county aforesaid he diligently enquire what damages the said S. hath sustained, as well by the reason of the premises, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which he shall thereof make, certify on the *oath* of \_\_\_\_\_ under the seal, &c. and the seals, &c. On which day here comes the said S. by his attorney aforesaid; and the sheriff, to wit, \_\_\_\_\_ has now returned here a certain inquisition taken before him at the town of *North'ton* in the county aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ last past by the oath of twelve, &c. whereby it is found that the said S. has sustained damages by reason of the premises, besides his costs and charges by him about his suit in this behalf expended, to \_\_\_\_\_ and for those costs and charges to — Therefore it is considered, that the said S. do recover against the said J. his damages aforesaid to \_\_\_\_\_ shillings and — pence by the inquisition aforesaid in form aforesaid found, and also — pounds — shillings and — pence to the said S. at his request for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to — pounds — shillings and — pence. And the said J. in mercy, &c.

Afterwards, to wit, on \_\_\_\_\_ next after \_\_\_\_\_ in this same term, before the Lord the King at *Westminster* comes the said J. by *A. M.* his attorney and says, that in the record and proceedings aforesaid, and likewise in the rendition of the judgment aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said S. C. against him the said J. B. when by the law of the land of this kingdom of *England* judgment in the plea aforesaid ought to have been given for the said J. against the said S.

There is error also in this, to wit, that by the record aforesaid it appears that the said J. was summoned to answer to the said S. in the plea aforesaid, yet no original writ between the parties aforesaid in the plea aforesaid is filed of record, nor remains of record in the said court of the Lord the King of the bench; therefore in that there is manifest error.

There



And the said *J. B.* by *J. B.* his attorney, comes and defends the force and injury when, *Ec.* and as bailiff of the most noble *W. Lord L.* well acknowledges the taking of the mare aforesaid the said time when, *Ec.* in a certain place called the *King's highway*, and justly, *Ec.* because he says, that the said place contains, and at the said time when, *Ec.* did contain in itself, *half a rod of land* with the appurtenances in *H.* aforesaid; which said half rod of land, long before the said time when, *Ec.* was parcel of a certain ancient messuage in *H.* aforesaid; which said messuage, long before the said time when, *Ec.* was the soil and freehold of the said *W. Lord L.* and because the mare aforesaid, the said time when, *Ec.* was in the said half rod of land in which, *Ec.* doing damage there, the said *J.* as bailiff of the said *W. Lord L.* well acknowledges the taking of the mare aforesaid in the place in which, *Ec.* and justly, *Ec.* doing damage, *Ec.* without that, that the said *J.* took the mare aforesaid in a certain place called the *King's highway*, as the said *S.* against him has declared: and this he is ready to verify: Wherefore he prays judgment, and a return of the mare aforesaid, to be adjudged to him, *Ec.*

And the said *S.* says, that the said *J. B.* as bailiff of the most noble *W. Lord L.* the taking the mare aforesaid ought not to acknowledge just, because he says, that he said *J. B.* at the said time when, *Ec.* took the mare aforesaid in the said place then called the *King's highway*, in manner and form as the said *S.* above in declaring has alledged; and this he prays may be inquired of by the country.

And the said *J.* says, that he to the plea of the said *S.* above in replying pleaded has no necessity, nor is by the law of the land obliged in any manner to answer, because he says, that the same plea is not sufficient in law to maintain his declaration aforesaid; and this he is ready to verify: wherefore for want of a sufficient replication in this behalf, the same *J.* as before prays judgment, and that the declaration aforesaid may be quashed.

And the said *S.* for aught that he has before alledged has sufficient matter in law for him the said *S.* to maintain his action and declaration as aforesaid, which he is ready to verify; which said matter the said *J.* does not deny, nor to the same in any wise answer, but that averment has altogether refused to admit; wherefore he prays judgment, and his damages by reason of the taking and unjust detention of the mare aforesaid, to be adjudged to him, *Ec.*

And because the justices here will advise themselves of and upon the premises before they give judgment thereon, day is given to the parties aforesaid here until from the day of \_\_\_\_\_ in \_\_\_\_\_ weeks to hear their judgment thereon, because the same justices here thereof

thereof are not yet, &c. On which day here comes as well the said S. as the said J. by their attornies aforesaid; and hereupon the premises being seen, and by the justices here more fully understood, it seems to the same justices here, that the plea of the said S. above in replying pleaded is sufficient in law to maintain his declaration aforesaid, as the said S. has above alledged; wherefore the said S. ought to recover his damages by reason of the premises against the said J.

But because it is unknown what damages the said S. has sustained by reason of the premises, the sheriff is commanded, that by the oath of twelve good and lawful men of the county aforesaid he diligently enquire what damages the said S. hath sustained, as well by the reason of the premises, as for his costs and charges by him about his suit in this behalf expended; and the inquisition which he shall thereof make, certify on the *oath* of \_\_\_\_\_ under the seal, &c. and the seals, &c. On which day here comes the said S. by his attorney aforesaid; and the sheriff, to wit, \_\_\_\_\_ has now returned here a certain inquisition taken before him at the town of *North'ton* in the county aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_ last past by the oath of twelve, &c. whereby it is found that the said S. has sustained damages by reason of the premises, besides his costs and charges by him about his suit in this behalf expended, to \_\_\_\_\_ and for those costs and charges to — Therefore it is considered, that the said S. do recover against the said J. his damages aforesaid to \_\_\_\_\_ shillings and — pence by the inquisition aforesaid in form aforesaid found, and also — pounds — shillings and — pence to the said S. at his request for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to — pounds — shillings and — pence. And the said J. in mercy, &c.

Afterwards, to wit, on \_\_\_\_\_ next after \_\_\_\_\_ in this same term, before the Lord the King at *Westminster* comes the said J. by A. M. his attorney and says, that in the record and proceedings aforesaid, and likewise in the rendition of the judgment aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said S. C. against him the said J. B. when by the law of the land of this kingdom of *England* judgment in the plea aforesaid ought to have been given for the said J. against the said S.

There is error also in this, to wit, that by the record aforesaid it appears that the said J. was summoned to answer to the said S. in the plea aforesaid, yet no original writ between the parties aforesaid in the plea aforesaid is filed of record, nor remains of record in the said court of the Lord the King of the bench; therefore in that there is manifest error,

There

There is error also in this, to wit, that by the record aforesaid it appears that the said *S.* in the said court of our Lord the said King of the bench came and appeared by *W. L.* his attorney, yet the said *W. L.* had no warrant of attorney of record by writ of the now Lord the King, nor without writ, to warrant his appearance for the same *S.* in the plea aforesaid.

There is error also in this, to wit, that by the record aforesaid it appears that the said *J.* in the said court of our said Lord the now King of the bench appeared by *W. M.* his attorney; *nevertheless* *W. M.* had no warrant of attorney of record by writ of the Lord the King, nor without writ, to warrant his appearance for the said *J.* in the plea aforesaid.

And the same *J.* prays several writs of the Lord the King, to wit, one to the Chief Justice of the said Lord the King of the bench, and another writ to the *Custos Brevium* of the said Lord the King of the bench aforesaid to be directed, to certify the said Lord the now King more fully as to the truth thereof: and to him they are granted, &c.

Whereupon ——— next after ——— days of the ——— is given by the court of the said Lord the King, before the King now here, to return to the court of the said Lord the King at *Westminster*, the said several writs of *certiorari* above prayed: the same day is given to the said *S.* there, &c.

And the said Chief Justice of the bench aforesaid, and the said *Custos Brevium* of the said Lord the now King, on that day have not, nor has either of them, returned the several writs aforesaid, neither have they or either of them, done any thing therein.

And hereupon the said *S.* freely here in court comes and says, that there is no error either in the record or proceedings aforesaid, or in the rendition of the judgment aforesaid; and prays that the court of our said Lord the King now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matters aforesaid above for error assigned, and that the judgment aforesaid may be in all things affirmed.

But because the court of our said Lord the King now here are not yet advised to give their judgment of and upon the premises, day is therefore given to the parties aforesaid before the Lord the King until within a month of *Saint Michael* where soever &c. to hear their judgment thereon, because the court of the said Lord the King now here, thereof is not yet, &c.



On which day before the Lord the King at *Westminster* come the parties aforesaid by their attornies aforesaid; whereupon as well the record and proceedings aforesaid, and the judgment on the same given, as the said causes and matters above for error assigned and alledged, being seen, and by the court of the said Lord the King now here more fully understood and diligently examined, because it seems to the court of the said Lord the King here, that the judgment aforesaid is nothing vitious or defective, and that there is no error in that record; it is considered, that the judgment aforesaid be in all things affirmed, and remain in its full force and effect, the said causes above for error assigned in any wise notwithstanding, &c.

And it is further considered by the same court, that the said *S.* do recover against the said *J. 12 l.* to the same *S.* by the court of the said Lord the King now here by his assent judged, according to the form of the statute thereof lately made and provided for his costs, charges and damages, which he has sustained by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of the Lord the King to correct error of and on the premisses; and that the same *S.* may have thereof his execution, &c.

*For taking sundry Goods.*

*Middx.* to wit. *R. H.* was summoned to answer to *R. H.* in a plea, why he took the goods and chattels of him the said *R. H.* and unjustly detained them, against surety and pledges until, &c.

And whereon the said *R. H.* by *J. P.* his attorney complains, that the said *R. H.* on the — day of *October* in the — year of the reign of our Lord the present King, at the parish of *St. Margaret Westminster* in the county aforesaid, in a certain place there called *Peter-street*, took the goods and chattels following, to wit, one jack, two spits, eighteen pewter plates, &c. (*reciting several other particulars.*) of the said *R. H.* and unjustly detained them, against surety and pledges until, &c. whereby the said *R. H.* says that he is prejudiced, and has damage to the value of 20 *l.* And therefore he produces the suit, &c.

And the said *R. H.* by *J. L.* his attorney comes and defends the force and injury when, &c. and well avows the taking of the goods and chattels aforesaid in the said place where, &c. and justly, &c. because he says, that the same place, where the taking of the goods and chattels aforesaid is supposed to be, contains, and at the same time when the taking of those goods and chattels is supposed to be, did contain in itself, a certain piece or parcel of land with the appurtenances

appurtenances in a place called *Peter-street*, otherwise *Bowling Alley*, in the parish of *St. Margaret Westminster* aforesaid in the county aforesaid; of which said piece or parcel of land with the appurtenances one *R. M. Knt.* before the said time when, *Ec.* was seised in his *demesne* as of fee; and being so *thereof seised*, the said *R.* before the said time when, *Ec.* to wit, on the 16th day of *May* in the ——— year of the reign of our Lord the King, at the parish of *St. Margaret Westminster* aforesaid, in the county aforesaid, demised the same piece or parcel of land with the appurtenances to the said *R. H.* To hold to the said *R.* and his assigns from the *feast of the Blessed Virgin Mary* then last past before the date of the same demise, for the term of *fifty-one years* from thence next ensuing and fully to be compleat and ended: By virtue of which said demise the said *R. H.* was possessed of the same piece or parcel of land for the term aforesaid; and so being thereof possessed, the same *R. H.* afterwards and before the said time when *Ec.* had erected and built the said messuage or tenement on the piece or parcel of land aforesaid, and was thereof possessed; and being so thereof possessed, he the same *R. H.* before the said time when, *Ec.* to wit, on the ——— day of ——— in the ——— year of the reign of our Lord the now King above said, demised the messuages aforesaid with the appurtenances to the said *R. H.* from the *feast of the birth of our Lord Christ* then next following for the term of *one whole year* from thence next ensuing fully to be compleat and ended; yielding therefore for the same year to the said *R. H.* or his assigns the sum of ——— of lawful money of *Great Britain*, at the four most usual feasts in the year, to wit, the *feasts of the Annunciation of the Blessed Virgin Mary, St. John the Baptist, St. Michael the archangel, and the birth of our Lord Christ*, by even and equal portions: by virtue of which said demise the said *R. H.* into the messuage aforesaid with the appurtenances entred, and was thereof possessed, and the same messuage with the appurtenances for the space of ——— occupied; and because the sum of ——— of the rent aforesaid, after the demise so made for the said ——— at the feast of *St. Michael* last past, and before the taking of the goods and chattels aforesaid, were to the same *R. H.* in arrear and unpaid, the same *R. H.* well avows the taking of the goods and chattels aforesaid in the said place where, *Ec.* and justly, *Ec.* for the said ——— to the same *R. H.* in form aforesaid being in arrear, as in the messuage aforesaid with the appurtenances to the distress of the said *R. H.* in form aforesaid charged and bound: And this he is ready to verify: Wherefore he prays judgment, and a return of the goods and chattels aforesaid, to be adjudged to him.

And the said *R. H.* says, that the said *R. H.* for the reasons before alledged ought not to avow the taking of the goods and chattels aforesaid in the said place where, *Ec.* just because he says, that the said ——— of the rent aforesaid at the said time when, *Ec.* were not in arrear and unpaid to the said *R. H.* nor was any penny thereof

thereof at the said time when, &c. in arrear to the said *R. H.* as the said *R. H.* in his avowry aforesaid has above alledged: And this he prays might be inquired of by the country.

And the said *R. H.* does so likewise, &c. Therefore the sheriff is commanded, that he cause to come before the Lord the King from the day of — in — weeks wheresoever, &c. — &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, There &c. On which day before the Lord the King at *Westminster* come the parties aforesaid by their attornies aforesaid; and the sheriff has not returned the writ, nor done any thing therein; therefore as before the sheriff is commanded, that he cause to come before the Lord the King from the day of — in — weeks wheresoever, &c. — &c. by whom &c. and who neither &c. to recognize, &c. because as well &c. The same day is given to the parties aforesaid, There, &c.

*For taking sundry Cattle.*

*Gloucester* to wit. *T. S.* Esq. *R. P.* Esq. and *R. B.* were summoned to answer to *N. L.* in a plea, why they took the cattle of him the said *N.* and unjustly detained them, against surety and pledges until, &c.

And whereon the same *N.* by *P. H.* his attorney complains, that the said *T. R.* and *R.* on the — day of — in the — year of the reign of our Lord *George* the Third now King of *England*, &c. at the parish of *Old Sodbury* in the county aforesaid, in a certain place there called the *Stubb Riding*, took the cattle to wit, two oxen of him the said *N.* and unjustly detained them, against surety and pledges until, &c. whereby the said *N.* says that he is prejudiced, and has damage to the value of — And therefore he produces the suit, &c.

And the said *T. S. R. P.* and *R. B.* by *T. E.* their attorney come and defend the force and injury when, &c. and the said *T. S.* and *R. P.* well avow, and the said *R.* as bailiff of the said *T. S.* and *R. P.* well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. because they say, that the same place, where the taking of the cattle aforesaid is supposed to be, does contain, and at the same time, when the taking of the cattle is supposed to be, did contain in itself — acres of meadow with the appurtenances, called *Stub Riding*, situate in the parish of *Old Sodbury*, and then and from time immemorial was and yet is parcel of the manor and within the manor of *Old Sodbury* in the county aforesaid, and



within the jurisdiction of the court-leet and view of frank-pledge within specified.

And that long before the said time when, &c. to wit, on the — day of — in the — year of the reign of the said Lord the now King, and long before, the said *T. S. R. P.* and one *J. N.* late of — in the county of — were jointly seised of and in the said manor of *Old Sodbury* aforesaid with the appurtenances, situate within the parish of *Old Sodbury* aforesaid, in their *demesne* as of fee.

And that at the said time when, &c. the said *N. L.* was and yet is occupier of the said close called *Stub Riding*, and that the said *T. S. R. P.* and *J. N.* and all those whose estate the same *T. R.* and *J.* have in the same manor with the appurtenances, from time immemorial have had, and been accustomed to have, within the manor aforesaid, a certain court of view of frankpledge, and all things which to a court of view of frank-pledge belong, of all the inhabitants and resiants within the manor aforesaid twice a year, to wit, once within a month next after the feast of *Easter*, and again within a month next after the feast of *St. Michael* the archangel, before their steward of that court for the time being within that manor yearly to be held, as to the said manor with the appurtenances belonging and appertaining.

And the said *T. R.* and *R.* further say, that before the said time when, &c. to wit, at a court of view of frank-pledge of the said *T. R.* and *J.* held at *Old Sodbury* aforesaid within the manor aforesaid, within a month next after the feast of —, to wit, on the — day of — in the — year of the reign of the said Lord the now King &c. before *T. E.* being then steward of the said *T. S. K. P.* and *J. N.* of the court view of frank-pledge, by the oath of — free and lawful men within the parish aforesaid resiant and inhabiting, then and there to inquire and present those things which to the court-leet and view of frank-pledge aforesaid then belonged, then in the same court being charged and sworn, then and there in the same court it was presented among other things, that the said *N. L.* the now plaintiff, then and for — months last past being occupier of the said close called the *Stub Riding* within the jurisdiction of that court, had not opened the King's highway, being within the precinct of the manor aforesaid, and within the precinct of the leet aforesaid, and the jurisdiction of the said court of view of frank-pledge, leading from the parish of *Yate* in the county aforesaid cross the said close called the *Stub Riding* unto and into a certain common field called *Harwood Common* within the precinct of the same manor, and within the precinct of the said leet, and the jurisdiction of the court of view of frank-pledge aforesaid, which before then there within the jurisdiction of the court-leet aforesaid he had stopped up and straitened, and the same way so straitened

straitened and stopped up then and for the space of \_\_\_\_\_ months then last past had continued straitened and stopped up, to the common nuisance of the said Lord the King thereby that way desiring to pass.

Whereupon the said *N. L.* the occupier of the close called the *Stub Riding*, for the cause aforesaid, at and by the same court of view of frank-pledge then and there was *amerced*.

Which said *amercement* by affeerors then and there in the same court of view of frank-pledge, to wit *N. W.* and *T. A.* affeerors in the same court, thereto then charged and sworn, then and there was duly affeered to \_\_\_\_\_.

And further in the same court by the said then steward of the said court, and the jurors aforesaid, it was ordered that the said *N. L.* being the occupier of the close aforesaid, should open and leave open the way aforesaid for the subjects of the Lord the now King there after to travel and pass before the \_\_\_\_\_ day of \_\_\_\_\_ then next following, under the penalty of \_\_\_\_\_ of lawful money of *Great Britain*, to be forfeited to the Lord in default thereof.

And the same *T. S. R. P.* and *R. B.* further say, that the said *N. L.* afterwards, to wit, the same day, year and place last mentioned, had notice of the order aforesaid, and that he being as aforesaid the occupier of the close aforesaid called the *Stub Riding*, did not open the same way for the liege subjects of the said Lord the King there to travel and pass at any time before the said \_\_\_\_\_ day of \_\_\_\_\_ then next ensuing, according to the form of the order aforesaid, by reason whereof at another court of view of frankpledge of the said *T. S. R. P.* and *J. N.* held at *Old Sodbury* aforesaid within the manor aforesaid, before the steward aforesaid, within one month next after the feast of \_\_\_\_\_, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of the said Lord the King aforesaid, by the oath of \_\_\_\_\_ other free and lawful men, being then in the same court last mentioned, lawfully sworn and charged to inquire and present in form aforesaid.

It was in the same court presented, that the said *N. L.* the occupier of the close aforesaid called the *Stub Riding*, had not opened the same way for the liege subjects of the Lord the now King there to travel and pass, according to the form of the said order last mentioned in that behalf so as aforesaid then before for that purpose made.

And that by reason thereof the said *N. L.* the occupier of the said close called the *Stub Riding*, had forfeited to the same *T. S. R. P.* and *J. N.* the Lords of the court aforesaid, and of the manor aforesaid

said with the appurtenances being then in form aforesaid seised, the said sum and penalty of ——— of lawful money of *Great Britain*.

And the said *T. S. R. P.* and *R.* further say, that afterwards and before the same time when *Ec.* to wit, on ——— day of ——— in the ——— year of the reign of the said Lord the now King, the said *J. N.* at *Old Sodbury* aforesaid in the county aforesaid died, whereby not only the said manor with the appurtenances came to the same *T. S.* and *R. P.* by right of survivorship, but the right of having the said amercement and penalty accrued to them the said *T.* and *R.*

And the said *T. S. R. P.* and *R.* further say, that at the time of the several presentments and courts aforesaid so as aforesaid held and made the way aforesaid was stopped and straitened, and so continued, by the said *N. L.* the occupier of the close aforesaid, to the common nuisance of the subjects of the said Lord the King.

And because the said sum and penalty of ——— above mentioned at the same time when, *Ec.* was in arrear and unpaid, although it was demanded of the said *N. L.* to wit, at *Old Sodbury* aforesaid, the said *T. S.* and *R. P.* in their own right well avow, and the said *R. B.* as bailiff of the said *T. S.* and *R. P.* and by their command, well acknowledges the taking of the cattle aforesaid, then being the cattle of the said *N. L.* at the said time when, *Ec.* in the said place where *Ec.* for the said penalty of ——— being in form aforesaid due and in arrear and justly *Ec.*

And the said *N.* says, that neither the said *T.* and *R.* the taking of the cattle aforesaid in the said place where, *Ec.* for the reason aforesaid before alledged ought to avow just, nor the said *R.* for the same reason the same thing in the same place ought to acknowledge just, because by protesting that there is not any such Kings highway as is above supposed, for plea the same *N.* says, that the way aforesaid was not straitened and stopped by the said *N.* in manner and form as the said *T.* and *R.* above by avowing, and the said *R.* above by acknowledging, have supposed : And this he is ready to verify.

Wherefore for that the said *T. S. R. P. R. B.* the taking of the cattle aforesaid have above confessed, the same *N.* prays judgment, and his damages by reason of the taking and unjust detention of those cattle, to be adjudged to him, *Ec.*

And the said *T. S. R. P.* and *R. B.* say, that the plea aforesaid by the said *N.* above in bar to the avowry and cognisance aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to preclude them the said *T. R.* and *R.* from having their avowry and cognisance aforesaid, and that they to that plea in manner and form aforesaid pleaded have no necessity, nor are by the law



of the land in any manner obliged to answer: And this they are ready to verify.

Wherefore for want of a sufficient plea in this behalf, the same *T. R.* and *R.* as before pray judgment, and a return of the cattle aforesaid, together with their damages, costs and expences, by them about their suit in this behalf sustained, according to the form of the statute in such case made and provided, to be adjudged to them, &c.

And for causes of demurrer in law, the same *T. R.* and *R.* according to the form of the statute in such case lately made and provided, do set down, and to the court here express the causes following, to wit, because the matter is traversed otherwise than is alledged in the declaration, whereby the plaintiff is obliged to prove what he has not alledged, and likewise because the matter traversed is not traversable by the laws of this kingdom in the manner in which it is traversed in the plea.

And the said *N.* says, that the plea aforesaid by him the said *N.* above in bar to the avowry and cognisance aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law to preclude the said *T. R.* and *R.* from having their avowry and cognisance aforesaid; which said plea, and the matter in the same contained, the said *N.* is ready to verify and prove, as the court, &c.

And because the said *T. R.* and *R.* do not answer to that plea, nor the same hitherto in any wise deny, the same *N.* as before prays judgment, and his damages aforesaid by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

But because the court of the said Lord the King here are not yet advised to give their judgment of and on the premises, day therefore is given to the parties aforesaid before the Lord the King from the day of ————— in three weeks wheresoever, &c. to hear their judgment of and upon the premises, because the court of the said Lord the King here thereof not yet, &c.

*For taking a Cow.*

*Stafford*, to wit. *J. I. J. H.* were summoned to answer to *J. F.* in a plea, why they took a cow of him the said *J.* and unjustly detained it against the surety and pledges, &c.

And

And whereon the said *J.* by *J. L.* his attorney complains, that the said *J. J.* on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of our Lord *George* the Third, now King of *Great Britain &c.* at *Shenston* in the county aforesaid, in a certain place called the *Lane*, took the cow aforesaid of him the said *J.* and unjustly detained it, against surety and pledges, until, *&c.* whereby the said *J.* says he is prejudiced, and has damage of the value of \_\_\_\_\_. And therefore he produces the suit, *&c.*

And the said *J.* and *J. H.* by *T. C.* their attorney come and defend the force and injury when, *&c.* and as bailiffs of *R. F. Gent.* well acknowledge the taking of the cow aforesaid in the said place in which *&c.* and justly *&c.* because they say, that the same place in which the taking of the cow aforesaid is supposed to be, contains, and at the said time when the taking of the cow aforesaid is supposed to be, contained in itself an acre of land with the appurtenances in *Shenston* aforesaid; which said town of *Shenston* is, and at the same time when, *&c.* and also from time out of mind was, within the manor of *Shenston* with the appurtenances in the county aforesaid; of which said manor with the appurtenances the said *R.* is, and at the said time when, *&c.* and long before was, seised in his *demesne* as of fee.

And the said *R.* and all those whose estate he has in the same manor with the appurtenances, for time out of mind have had, and been accustomed to have, a court-leet or view of frank-pledge of the same manor, and whatever to view of frank-pledge belongs, of all the inhabitants and residents of that manor, before the steward of the same court for the time being, every year within a month next after the feast of *St. Michael* the archangel, at that manor yearly to be held, as to the same manor with the appurtenances belonging.

And the same *J.* and *J.* further say, that within the manor aforesaid there is, and from time out of mind has been, such custom, that the jurors to inquire and present those things, which to that court-leet and view of frank-pledge belong, charged and sworn, at the court or view of frank-pledge of the manor aforesaid, held at that manor within a month next after the feast of *St. Michael* the archangel, yearly have chosen, and for all the time aforesaid have been accustomed to chuse, a proper man from the inhabitants within the manor aforesaid to be constable of the constabulary of *Shenston* aforesaid, to serve for one year in that office, which said man so elected has taken upon himself, and for all the time abovesaid has been used and accustomed to take upon himself that office, and has taken and been accustomed to take an oath for the due execution of that office, under a reasonable penalty, for all the time abovesaid, by the juries aforesaid at such court-leet or view of frank-pledge in that behalf set:

And

And the same *J.* and *J.* further say, that the said *R.* being lord of the manor aforesaid, and of the same in form aforesaid seized, at a court-leet or view of frank-pledge of that manor, held at that manor within a month next after the feast of *St. Michael* the archangel, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of our Lord *George* the Third now King of *England*, &c. before *H. F.* then steward to the said *R.* of that court, the said *J. F.* then and long before being an inhabitant within the manor aforesaid at *Shenston* aforesaid, and a proper man to be constable of the said constablewick of *Shenston* aforesaid, by *E. T. T. G. J. C. J. A. J. H. W. M. W. R. N. W. T. S. J. M. J. S. J. A.* and *J. D.* good and lawful men, and inhabiting within the manor aforesaid, and then and there in the same court charged and sworn to inquire and present those things which to that court-leet and view of frank-pledge belonged, duly and according to the custom aforesaid was chosen to be constable of the constablewick of *Shenston* aforesaid for one year then next ensuing to serve in that office.

And those jurors then and there in the same court ordered, that the said *J.* should take his oath for the due execution of his office aforesaid, under the penalty of forfeiting \_\_\_\_\_ whereof the said *J. F.* immediately afterwards, to wit the same day and year there had notice.

Nevertheless the said *J.* has not taken his oath for the due execution of the office of constable aforesaid, nor has executed or taken upon himself that office, but to do it then and often afterwards there absolutely refused.

Wherefore afterwards and before the said time when, &c. to wit, at a court-leet or view of frank-pledge of the said manor of the said *R.* held at that manor within a month next after the feast of *St. Michael* the archangel, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the reign of the said Lord the King aforesaid, before *H. F.* then steward to the said *R.* of that court, by *E. T. J. C. W. P. T. G. J. P. J. J. E. H. T. S. J. M. W. M. G. H. J. S.* the younger, and *J. A.* good and lawful men then inhabiting within the manor aforesaid, then and there in the same court sworn and charged to inquire and present those things which to that court-leet or view of frank-pledge belonged, it was presented, that the said *J. F.* because he was duly elected to be constable of the constablewick of *Shenston* aforesaid at the last leet held for the manor aforesaid, and under the penalty of \_\_\_\_\_ on him set, was ordered to take upon himself that office, and execute it, and take his oath in form aforesaid for the due execution of that office; which, or any part whereof, he had not done, wherefore he had forfeited to the lord of the manor aforesaid the said \_\_\_\_\_ of the penalty aforesaid, then to be paid to the lord of the manor aforesaid, as by the record thereof in the custody of the said steward of the court of the manor of him the said *R.* at that manor remaining more fully appears.



And because the said — for that penalty to the same *R.* so as aforesaid being lord of the manor aforesaid, at the said time when, &c. were in arrear and unpaid, the same *J.* and *J. H.* as bailiffs of him the said *R.* we'll acknowledge the taking of the cow aforesaid in the said place in which, &c. and justly, &c. for the same — for the penalty or amercement aforesaid to the said *R.* so being in arrear and unpaid, and within the manor aforesaid, &c.

And the said *J.* says, that by any thing by the said *J.* and *J.* above in the cognisance aforesaid by pleading alledged, the same *J.* and *J.* the taking of the cow aforesaid in the said place in which, &c. ought not to acknowledge just, because he says, that the plea aforesaid by them the said *J.* and *J.* in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient in law to acknowledge the taking of the cow aforesaid in the said place in which, &c. just, and that he to that cognisance in manner and form aforesaid made and pleaded has no necessity, nor is by the law of the land obliged, to answer: And this he is ready to verify.

Wherefore for want of a sufficient plea in this behalf the same *J.* prays judgment, and his damages by reason of the taking and unjustly detaining of the cow aforesaid, to be adjudged to him, &c.

And the said *J.* and *J.* say, that the plea aforesaid by them the said *J.* and *J.* in manner and form aforesaid above pleaded, and the matter in the same contained, are good and sufficient in law for them the said *J.* and *J.* to acknowledge the taking of the cow aforesaid in the said place in which, &c. just; which said plea, and the matter in the same contained, they the said *J.* and *J.* are ready to verify and prove, as the court, &c.

And because the said *J.* has not pleaded or answered to that cognisance, nor hitherto any way denied it, the same *J.* and *J.* pray judgment, and a return of the cow aforesaid, together with their damages, costs and charges, according to the form of the statute in such case made and provided, to be adjudged to them, &c.

But because the court of the said Lord the King now here are not yet advised to give their judgment of and upon the premises, day therefore is given to the parties aforesaid before the Lord the King until ————— wheresoever, &c. to hear their judgment of and upon those premises, because the court of the said Lord the King now here thereof not yet, &c.

## For taking Sheep, &amp;c.

*Hertford*, to wit. *W. P.* late of *B*— in the county aforesaid, Knt; was summoned to answer to *S. T.* Esq; in a plea, why he took the cattle of him the said *S.* and unjustly detained them, against surety and pledges, &c.

And whereon the same *S.* by *J. W.* his attorney complains, that the said *W.* on the ——— day of ——— in the ——— year of the reign of our Lord *George* the Third now King of *England*, &c. at *B*— in a certain place there called *Marryhill Ground*, the cattle of him the said *S.* to wit, 36 wether sheep, 12 ewe sheep and 8 lambs, took and unjustly detained them, against surety and pledges until, &c. whereby the same *S.* says that he is prejudiced, and has damage to the value of ——— And therefore he produces the suit, &c.

And the said *W.* by *R. B.* his attorney comes and defends the force and injury when, &c. and the same *W.* in his own proper right well avows, and as bailiff to *A.* earl of *E.* well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says, that the same place, in which the taking of the cattle aforesaid is supposed to be, contains, and at the said time, when the taking of the cattle aforesaid is supposed to be, did contain in itself two acres of pasture with the appurtenances in *B*— aforesaid; which said two acres of pasture with the appurtenances are, and at the said time when, &c. were, the soil and freehold of them the said *W.* and *A.* earl of *E.* and because the cattle aforesaid at the said time when, &c. were in the said two acres of pasture eating up the grass in the same then growing, and doing damage there, the same *W.* in his own proper right well avows, and as bailiff to the said *A.* earl of *E.* well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there, &c.

And the said *S.* says, that the said *W.* for the reason before alleged, the taking of the cattle aforesaid in the said place in which, &c. ought not in his own proper right to avow, and as bailiff of the said earl to acknowledge just, because he says, that the said two acres of pasture in which, &c. are, and at the said time when, &c. and also from time immemorial were, parcel of the manor of *B*— and customary land of the same manor, and demised and demiseable by copy of court-roll of that manor, by the lord or lords of the same manor, or by their steward of the court of that manor for the time being, to any person or persons willing to take them in *fee-simple*, or otherwise, at the will of the lord or lords, according to the custom of the manor aforesaid.

And the same *S.* further says, that the said earl and *W.* before the said time when, &c. to wit, on the ——— day of ——— in the ——— year of the reign of the said Lord the now King, &c. were lawfully lords of the manor aforesaid; and the said earl and *W.* being then lords of the manor aforesaid, the same earl and *W.* afterwards and before the said time when, &c. to wit, on the same ——— day of ——— in the ——— year aforesaid, at a court of them the said earl and *W.* of their manor aforesaid, then held for that manor within the manor at *B*—— aforesaid in the county of *Hertford*, by one *T. S.* then their steward of the court of their manor aforesaid, by copy of court-roll of that manor granted the said two acres of pasture with the appurtenances in which, &c. among other things, to the said *S.* *To have and to hold* to the same *S.* his heirs and assigns for ever, at the will of the lords, according to the custom of the manor aforesaid; and the same *S.* according to the custom of the manor aforesaid, then and there was admitted tenant thereof.

By virtue of which said grant and admission, the same *S.* before the said time when, &c. into the said two acres of pasture with the appurtenances in which, &c. among other things, entred, and was and yet is thereof seised in his *demefne* as of fee, at the will of the lords, according to the custom of the manor aforesaid; and he the said *S.* being so thereof seised, the same *S.* before the said time, when, &c. put his cattle aforesaid into the said two acres of pasture in which, &c. feeding on the grass there then growing, until the said *W. P.* on the said ——— day of ——— in the ——— year aforesaid, at *B*—— aforesaid, in the said two acres of pasture called *Marryhill Grounds*, in which, &c. took the same cattle of the said *S.* and unjustly detained them, against surety and pledges, until, &c. as the same *S.* above against him complains: And this he is ready to verify.

Wherefore for that the said *W. P.* the taking of the cattle aforesaid has above confessed, the same *S.* prays judgment, and his damages by reason of the taking and unjustly detaining of those cattle, to be adjudged to him, &c.

And the said *W.* says, that well and true it is, that the said two acres of pasture with the appurtenances in which, &c. are, and at the said time when, &c. and also from time immemorial were, parcel of the said manor of *B*——, and customary lands of the same manor, and demised and demiseable by copy of court-roll of that manor, by the lord or lords of the same manor, or by their steward of the court of that manor for the time being, to any person or persons willing to take them in *fee-simple*, or otherwise, at the will of the lord or lords, according to the custom of the manor aforesaid; and that the said earl and *W.* before the said time when, &c. to wit, the said ——— day of ——— in the ——— year of the reign of the said Lord the now King



King aboveſaid, were lawfully lords of the manor aforeſaid; and that the ſaid earl and *W.* then being lords of the manor aforeſaid, the ſame earl and *W.* afterwards and before the ſaid time when, &c. to wit, on the ſaid ——— day of ——— in the ——— year aforeſaid, at *B*—— aforeſaid in the county of *Hertford* aforeſaid, by the ſaid *T. S.* then their ſteward of the court of their manor aforeſaid, by copy of court-roll of that manor granted the ſaid two acres of paſture with the appurtenances in which, &c. among other things, to the ſame *S.* To have and to hold to the ſame *S.* his heirs and assigns for ever, at the will of the lords, according to the cuſtom of the manor aforeſaid; and that the ſaid *S.* according to the cuſtom of the manor aforeſaid, was then and there admitted tenant thereof; and that by virtue of the grant and admiſſion aforeſaid, be the ſaid *S.* before the ſaid time when, &c. into the ſaid two acres of paſture with the appurtenances among other things entred, and was thereof ſeiſed in his *demeſne* as of fee at the will of the lords, according to the cuſtom of the manor aforeſaid, as the ſaid *S.* above by pleading has alledged.

But the ſaid *W. P.* further ſays, that the ſaid two acres of paſture with the appurtenances in which, &c. together with the other lands and tenements in the ſame copy mentioned, and by the ſame copy to the ſaid *S.* and his heirs granted, and to which the ſaid *S.* was as aforeſaid admitted, at the ſaid time of the admiſſion of the ſaid *S.* to the ſame, were and yet are of the clear yearly value of ——— and that the ſaid earl and *W.* by the ſaid *T. S.* in the ſaid full court of the manor aforeſaid, held within that manor on the ſaid ——— day of ——— in the ——— year of the reign of the ſaid Lord the now King aboveſaid, he the ſaid *T. S.* being then ſteward as aforeſaid of the ſaid earl and *W.* then lords of the manor aforeſaid, of the ſaid court of their manor aforeſaid, after the ſaid admiſſion of the ſaid *S. T.* to the ſaid two acres in which, &c. and the ſaid other lands and tenements by the copy aforeſaid made to the ſaid *S.* granted, then and there did aſſeſs and appoint the ſum of ——— for the fine for the ſaid grant to the ſaid *S.* of the ſaid two acres of paſture with the appurtenances in which, &c. and the other lands and tenements aforeſaid, by the copy aforeſaid in form aforeſaid granted, to be paid by him the ſaid *S.* to the ſaid earl and *W.* being as aforeſaid lords of the manor aforeſaid, on the ——— day of ——— then next enſuing at the porch of the pariſh church of *B*—— aforeſaid in the ſaid county of *Hertford*; and that the ſaid *S.* then and there, to wit, at the manor aforeſaid, of all and ſingular the premiſſes had notice.

And the ſaid *W.* further ſays, that the fine aforeſaid for the lands and tenements by the copy aforeſaid in manner and form aforeſaid granted to the ſaid *S.* was a reaſonable fine; and that the ſaid *S. T.* although he had notice from the ſaid lords of the manor aforeſaid, at the court aforeſaid held as aforeſaid at the manor aforeſaid, on the ſaid ——— day of ——— aforeſaid, of the premiſſes aforeſaid, did not pay to the ſaid earl and *W.* lords of the manor aforeſaid, or either

of them, the said sum of ——— for the fine aforesaid in form aforesaid assessed, on the said ——— day of ——— then next ensuing the admission of him the said *S.* at the said porch of the parish church of *B*—— aforesaid, but the same ——— to the said earl and *W.* then and there absolutely denied and refused, and yet does refuse, to pay; whereby the same *S. T.* has forfeited to the said earl and *W.* being as aforesaid the lords of the manor aforesaid, whereof, &c. all his customary right, estate, title and interest aforesaid, of and in the said two acres of pasture with the appurtenances in which, &c. and the said other lands and tenements in the grant aforesaid specified; after which said forfeiture in form aforesaid made, and before the said time when, &c. the said earl and *W.* being as aforesaid lords of the manor aforesaid, into the said two acres of pasture with the appurtenances in which, &c. entred, and were and yet are thereof seised in their *demesne* as of fee; and because the cattle aforesaid after the entry aforesaid, to wit, at the said time when, &c. were in the said two acres of pasture with the appurtenances in which, &c. eating up the grass in the same then growing, and doing damage there, the same *W.* as before in his own proper right well avows, and as bailiff to the said earl well acknowledges the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. so doing damage there: And this he is ready to verify.

Wherefore as before he prays judgment, and a return of the cattle aforesaid, together with his damages, costs and expences by him about his suit in this behalf sustained, according to the form of the statute in such case thereof lately made and provided, to be adjudged to him, &c.

And the said *S.* by protesting that the sum aforesaid of ——— for the fine aforesaid for the said lands and tenements by the copy aforesaid to the said *S.* in manner and form aforesaid granted was not a reasonable fine, as the said *W.* above by pleading has alledged, for plea the same *S.* says, that within the manor aforesaid there is, and from time immemorial has been, such custom used and approved within that manor for all the time aforesaid, to wit, that every person or persons who should be admitted tenant or tenants to any customary lands or tenements of that manor by copy of court-roll of that manor, has and have been and ought to pay to the lord or lords of the same manor for the time being, for a fine for his or their admission to such customary lands or tenements, so much money as those lands or tenements were worth by the year at the time of such admission, and no more.

And the said *S.* in fact says, that the said two acres of pasture with the appurtenances in which, &c. together with the other lands and tenements in the same copy mentioned, and by the same copy to the said *S.* and his heirs granted, and to which the said *S.* was as aforesaid admitted, at the time of the admission of the said *S.* to the same  
were

were worth, and yet are worth, by the year ——— and no more.

And the same *S.* further says, that at the time of his admission to the tenements aforesaid with the appurtenances, to wit, at the said court of the manor, held within that manor on the said ——— day of ——— in the ——— year aforesaid, he was ready and offered to pay to the said *W.* then one of the lords of that manor, being then and there present in his proper person, so much money as the said customary tenements with the appurtenances were worth by the year at the time of the admission of him the said *S.* to the same, to wit, ——— of lawful money of *Great Britain*; which said ——— the said *W.* then and there absolutely refused to receive or accept of the same *S.* And this he is ready to verify.

Wherefore as before he prays judgment, and his damages by reason of the taking and unjustly detaining of the cattle aforesaid, to be adjudged to him, &c.

And the said *W.* says, that the plea of the said *S.* above in rejoining pleaded, and the matter in the same contained, are not sufficient in law to preclude him the said *W.* from having his avowry and cognisance aforesaid, and that he to that plea in manner and form aforesaid pleaded has no necessity, nor is by the law of the land obliged, to answer: And this he is ready to verify.

Wherefore for want of a sufficient plea in this behalf, the same *W.* as before prays judgment, and a return of the cattle aforesaid, together with his damages, costs and expences by him about his suit in this behalf sustained, according to the form of the statute in such case thereof lately made and provided, to be adjudged to him, &c.

And for cause of demurrer in law to that plea, the same *W.* according to the form of the statute in such case thereof lately made and provided, sets down, and to the court here expresses this cause following, to wit, that the value of the land remains in estimation, and the custom aforesaid by the said *S.* above in pleading pretended and alledged is uncertain, insufficient and void in law.

And the said *S.* for that he has above alledged sufficient matter in law in his plea aforesaid above in rejoining pleaded to preclude the said *W.* from having his avowry and cognisance aforesaid, which he is ready to verify, which said matter the said *W.* does not deny, nor thereto in any wise answer, but altogether refuses to admit that averment, as before prays judgment, and his damages by reason of the taking and unjustly detaining of the cattle aforesaid, to be adjudged to him, &c.

And



And because the justices here will advise themselves of and upon the premisses before they give judgment thereon, day therefore is given to the parties aforesaid here until the ——— of St. ——— to hear their judgment thereon, because the same justices here thereof not yet, &c.

On which day here comes as well the said *S.* as the said *W.* by their attornies aforesaid; and hereupon the premisses being seen, and by the justices here more fully understood, it seems to the said justices here, that the said plea of the said *S.* above in rejoining pleaded, and the matter in the same contained, is sufficient in law to preclude him the said *W.* from having his avowry and cognisance aforesaid, as the said *S.* has above alledged; wherefore the said *S.* ought to recover his damages against the said *W.* by reason of the taking and unjustly detaining of the cattle aforesaid.

But because it is unknown what damages the said *S.* has sustained by reason of the taking and unjustly detaining of the cattle aforesaid, the sheriff is commanded, that by the oath of good and lawful men of the county aforesaid he diligently inquire what damages the said *S.* has sustained, as well by reason of the taking and unjustly detaining of those cattle, as for his costs and charges by him about his suit in this behalf sustained; and the inquisition which he shall thereof make, be certified here from the day of ——— in ——— days, under the seal, &c. and the seals, &c.

On which day here comes the said *S.* by his attorney aforesaid; and the sheriff, to wit, *J. E.* Esq. has now returned here a certain inquisition taken before him at *S.* ——— in the county aforesaid on the ——— day of ——— last past, by the oath of 12, &c. whereby it is found that the said *S.* has sustained damage by reason of the taking and unjustly detaining of the cattle aforesaid, beside his cost and charges by him about his suit in this behalf expended, to ——— and for those costs and charges to ———.

Therefore it is considered, that the said *S.* do recover against the said *W.* his damages aforesaid to ——— by the inquisition aforesaid in form aforesaid found, and also ——— to the same *S.* at his request, for his costs and charges aforesaid, by the court here of increase adjudged; which said damages in the whole amount to ——— And the said *W.* in mercy, &c.

*Note, This judgment was afterwards affirmed on a writ of error.*

*For damage feasant in the Defendant's Freehold.*

AND the said C. by R. B. his attorney, comes and defends the force and injury when, &c. and well avows the taking of the said cattle in the said place where, &c. to be just, because he says that the said place doth, and at the said time when, &c. did contain in itself ten acres of land with the appurtenances; which ten acres of land with the appurtenances are, and at the time of taking the cattle aforesaid were the soil and freehold of the said C. and because the cattle aforesaid, at the said time when, &c. were in the said place, there feeding upon the grass there growing, and doing damage there, the said C. well avows the taking of the cattle aforesaid, in the said place where, &c. and justly, &c. for the damage there so done as aforesaid.

And the said (*plaintiff*) says, That the said C. ought not to avow the taking the cattle aforesaid in the said place where, &c. to be just; because he says, that the said ten acres with the appurtenances are, and at the said time when, &c. were the soil and freehold of the said (*plaintiff*) and not the soil and freehold of the said C. as the said C. has above alledged; and this he prays may be inquired of by the country; and the said C. does likewise the same.

Pippin and another, at the suit of Maynard.

*Declaration in Replevin for the taking of the Plaintiff's Cattle.*

*The defendants plead property in a stranger, and for a return make cognisance as bailiffs to A. and B. for damage-feasant in their freehold.*

AND the said Edward and Sarah, by W. L. their attorney, come and defend the force and injury when, &c. and say, that at the time when the taking of the cattle aforesaid is supposed to be, the property of those cattle was in one Stephen Hewes, who is now surviving and in full life, to wit, at H. aforesaid in the county aforesaid; without that, that the property of the cattle aforesaid at the time of the taking of them, was in the said Jonathan Maynard, as he by his writ and declaration aforesaid above supposes: and this they are ready to verify: wherefore they pray judgment of the

writ and declaration aforesaid, and a return of the cattle aforesaid, to be adjudged to them, &c.

And to have a return of the cattle aforesaid; the same *Edward* and *Sarah* as bailiffs of *A. B.* and *C. B.* well acknowledge the taking of the cattle aforesaid in the said place where, &c. called *Hebrom*, and justly, &c. because they say, that the same place called *Hebrom* contains, and at the said time when the taking of the cattle aforesaid is supposed to be, did contain in itself 40 acres of pasture with the appurtenances in *Kingsthorpe* in the county aforesaid; which said 40 acres of pasture with the appurtenances are and at the said time when, &c. were the soil and freehold of the said *A. B.* and *C. B.*

And because the cattle aforesaid at the said time when, &c. were in the said place called *Hebrom* aforesaid, eating up the grass there then growing, and doing damage there, the same *Edward* and *Sarah*, as bailiffs of the said *A. B.* and *C. B.* well acknowledge the taking of the cattle aforesaid in the said place where, &c. and justly, &c. so doing damage there: wherefore they pray judgment, and a return of the cattle aforesaid, to be adjudged to them, &c.

*Replication and issue on the property.*

And the said *Jo. Maynard* says, that his writ and declaration aforesaid ought not to be quashed, because he says, that the property of the cattle aforesaid at the said time of the taking them was in the said *Jonathan Maynard*, in manner and form as he by his writ and declaration aforesaid hath above thereof alledged, to wit, at *Hebrom* aforesaid, in the county aforesaid: and this he prays may be inquired of by the country; and the said *Edward* and *Sarah* do so likewise: therefore the sheriff is commanded that he cause to come, &c.

*Where the Defendant pleads Property as to Part, and Non cepit as to the Residue.*

AND the said *R—* by *R— B—* his attorney, comes and defends the force and injury when, &c. and as to the taking of ten sacks of flour, part of the goods and chattels aforesaid, he the said *R—* says, That the property of those goods and chattels at the said time when, &c. were in the said *R—* and not in the said *T—* as it is above supposed by the writ aforesaid; and this he is ready to verify; whereupon, as to the taking and detaining those goods and chattels, the said *R—* prays judgment of the writ aforesaid, and that it may be quashed, &c.

And



And as to the taking of the residue of the goods and chattels aforesaid, he the said *R*— pleads, that he did not take those goods and chattels, the said residue, as the said *T*— does above complain against him; and therefore he puts himself upon the country; and the said *T*— does likewise the same.

And the said *T*— as to the said plea of the said *R*— above pleaded to quash the writ aforesaid says, that his said writ ought not to be quashed by reason of any thing above alledged, because he says, that the property of the goods and chattels aforesaid above specified in the said plea, at the time of taking those goods and chattels, was in the said *T*— as he does above suppose by his writ aforesaid; and this he prays may be inquired of by the country; and the said *R*— does likewise the same; therefore as well to try that issue, as the said other issue above joined, the sheriff is command that he cause to come here twelve, &c.

Note. Upon pleading non cepit on a claim of property, the defendant shall have his goods again.

*A Plea of Cognisance as Bailiff, for a Rent-Charge*

AND the said *W*— by *H. S.* his attorney comes and defends the force and injury when, &c. and as bailiff of *M. G.* well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. because he says, that the same place in which the taking of those cattle is supposed to be, contains, and at the said time when the taking of those cattle is supposed to be, did contain in itself 40 acres of land with the apputenances in *L*— aforesaid, and that long before the said time when, &c. the said *F*— was seised of the said 40 acres of land with the appurtenances, whereof the place where, &c. is parcel, in his *demesne* as of fee, and the said 40 acres of land held of the said *M*— as of his manor of *B*— in the county of *S*— aforesaid, by fealty, suit of court, and the rent of 12s. 6d. every year, at the feast of St. Michael yearly to be paid; of which services the said *M*— was seised by the hands of the said *F*— as by the hands of his very tenant, to wit, of the fealty and suit of court, and of the rent aforesaid in his *demesne* as of fee; and because 5l. 12s. 6d. of the rent aforesaid, for nine years, ended at the feast of St. Michael in the 26th year of the reign of the said Lord the late King, to the same *M*— at the said time when, &c. were in arrear and not paid, the same *W*— as bailiff of the said *M*— well acknowledges the taking of the cattle aforesaid in the said place where, &c. and justly, &c. for the same five pounds twelve shillings and sixpence so in form aforesaid being in arrear, as in

parcel of the said land of the said *M*— in form aforesaid held, and within the fee, &c. and this he is ready to verify : wherefore he prays judgment, and a return of the cattle aforesaid, to be adjudged to him, &c.

And the said *F*— says, that the said *M*— was not seised of the services aforesaid by the hands of him the said *F*— as by the hands of his very tenant, as the said *W*— hath above alledged : and this he is ready to verify : wherefore for that the said *W*— the taking of the cattle aforesaid in the said place where, &c. has above acknowledged, the same *F*— prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him &c.

And the said *William* (as before) says, that the said *M*— was seised of the services aforesaid by the hands of the said *F*— as by the hands of his very tenant, as he has above alledged : and of this he puts himself upon the country : and the said *F*— does so likewise, &c.

Therefore the sheriff is commanded, that he cause to come here from the day of the *Holy Trinity* in three weeks twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Liddiard and Creswicke.

*An Avowry for Damage-Feasant in his Freehold.*

AND the said *Francis* by *Andrew Innys* his attorney comes and defends the force and injury when, &c. and well avows the taking of the cattle aforesaid in the said place in which, &c. and justly, &c. because he says, that the same place in which, &c. is known, and at the said time when, &c. and long before was known, as well by the name of *Hannam's Common*, as by the name of *Hannam's Heath*, and contains, and at the same time when &c. contained in itself 50 acres of pasture with the appurtenances in the said parish of *Bitton* in the said county of *Gloucester*, which said 50 acres of pasture with the appurtenances are, and at the said time when, &c. were the soil and Freehold of him the said *Francis* ; and because the cattle aforesaid at the said time when, &c. were in the said place in which, &c. eating up the grass there then growing, and doing damage there, the same *Francis* in his own proper right well avows the taking of the cattle aforesaid in the said place in which, &c. and

and justly, &c. so doing damage there: and this he is ready to verify: wherefore he prays judgment, and a return of the cattle aforesaid, together with his damages, costs and charges, in this behalf sustained, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

And the said *John Liddiard* says, that the said *Francis*, for the reason before alledged, the taking of the cattle aforesaid in the said place in which, &c. ought not to avow just, because by protesting that the same place in which &c. at the said time when, &c. was not the freehold of him the said *Francis*, as is above supposed; for plea, the said *John* says, that long before the said time of taking of the cattle aforesaid in the said place in which, &c. to wit, on the 21st day of *August* in the 10th year of the reign of our lord *Geo. 2.* late king of *England*, &c. *Theodore Newton*, Knt. was seised in his *demesne* as of fee, of and in one messuage and 47 acres and half of land arable, meadow and pasture, with the appurtenances, in *Hannam* and *Bitton* in the parish of *Bitton* aforesaid in the county \_\_\_\_\_ aforesaid; and being so thereof seised, afterwards, to wit, on the 21st day of *August* in the tenth year of the reign of our lord *Geo. 2.* late king of *England* aforesaid, at *Bitton* aforesaid in the county \_\_\_\_\_ aforesaid, demised the \_\_\_\_\_ messuage aforesaid and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, to *William Liddiard* and *Katherine* his wife, and him the said *John Liddiard*; To hold to the said *William Liddiard* and *Katherine* his wife for and during the term of their natural lives, and the natural life of the longer liver of them, and after their decease the remainder thereof to the said *John Liddiard*, for and during the term of the natural life of him the said *John*: by virtue of which said demise the same *William* and *Katherine* afterwards of the said messuage and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, were seised in their *demesne* as of freehold for the term of their lives and the life of the longer liver of them, the remainder thereof after their decease to the said *John* for the term of his life so as aforesaid belonging; and the said *William* and *Katherine* being so thereof seised, afterwards, to wit, on the first day of *September* in the 32d year of the reign of our lord *Geo. the second*, late king of *England*, &c. at *Bitton* aforesaid, in the county \_\_\_\_\_ aforesaid, died thereof seised; after the death of which said *William* and *Katherine*, he the said *John*, as in his remainder aforesaid, afterwards, to wit, on the said first day of *September* in the 32d year of the reign of our lord *Geo. the second*, late king of *England*, &c. at *Bitton* aforesaid, in the county \_\_\_\_\_ aforesaid, into the messuage \_\_\_\_\_ aforesaid and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, by virtue of the demise aforesaid entered, and was and is yet thereof seised, in his *demesne* as of freehold for the term of his life:



life: and the same *John* farther says, that at the time of the demise aforesaid made, he the said *Theodore Newton*, and all those whose estate the same *Theodore* then had of and in the said messuage ——— and 47 acres and a half of land arable, meadow and pasture, with the appurtenances, have had, and for time out of mind have been accustomed to have, for themselves, their farmers and tenants, of the said messuage ——— and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid with the appurtenances, *levant* and *couchant* every year at all times of the year, as to their tenements aforesaid belonging and appertaining: by reason whereof the said *John*, before the said time when, &c. to wit, on the 9th day of *September* in the 33d year of the reign of our said lord *Geo. 2.* late king, the cattle aforesaid above specified, being then the proper cattle of him the said *John*, upon the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, then *levant*, and *couchant*, into the said common called *Hannam's Common*, being the place in which, &c. put, as he well might, to use his common aforesaid; and the said *Francis* the said cattle, to wit, the said 30 sheep so in the said place in which, &c. put, feeding on the grass there growing, and using the common of pasture of him the said *John* there afterwards, at the said time when, &c. to wit, on the 10th day of *September* in the 33d year aforesaid, at *Bitton* aforesaid in the said place in which, &c. commonly called *Hannam's Common*, took and them unjustly detained, against surety and pledges, in manner and form as the said *John* above against him complains; and this the same *John* is ready to verify: wherefore he prays judgment, and his damages by reason of the taking and unjust detention of the cattle aforesaid, to be adjudged to him, &c.

And the said *Francis Creswicke* as before, says, that the said 50 acres of pasture, called *Hannam's Common*, otherwise *Hannam's Heath*, are and at the said time when, &c. were the soil and freehold of him the said *Francis*; and because the cattle aforesaid at the said time when, &c. were in the said place in which, &c. eating up the grass then there growing, and doing damage there, the said *Francis* the same cattle took, as he has above alledged; without that, that the said *Theodore*, and all those whose estate the same *Theodore* then had of and in the said messuage and 47 acres and a half of land arable, meadow and pasture, with the appurtenances, have had, and from time out of mind have been accustomed to have, for themselves, their farmers and tenants, of the said messuage and the said 47 acres and a half of land arable, meadow and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid with the appurtenances, *levant* and *couchant* every year, at all times of the year, as to their tenements aforesaid belonging and appertaining,

Sittings appointed in *London* and *Middlesex*, before the Right Honourable Sir *William De Grey*, Knt. Lord Chief Justice of the Court of Common Pleas at *Westminster*, in and after *Easter Term*, 1775.

| MIDDLESEX.         |   |        | LONDON.            |   |        |
|--------------------|---|--------|--------------------|---|--------|
| Friday,            | — | May 5  | Monday             | — | May 8  |
| Thursday,          | — | 11     | Friday,            | — | 12     |
| Thursday,          | — | 18     | Friday,            | — | 19     |
| Monday,            | — | 22     | Tuesday,           | — | 23     |
| <i>After term.</i> |   |        | <i>After term.</i> |   |        |
| Tuesday,           | — | May 30 | Wednesday,         | — | May 31 |

Sittings appointed in *London* and *Middlesex*, before the Right Honourable *William Lord Mansfield*, Lord Chief Justice of the Court of King's Bench at *Westminster*, in and after *Easter Term*, 1775.

| MIDDLESEX.         |   |        | LONDON.            |   |        |
|--------------------|---|--------|--------------------|---|--------|
| Tuesday,           | — | May 9  | Wednesday,         | — | May 10 |
| Monday,            | — | 15     | Tuesday,           | — | 16     |
| Monday,            | — | 22     | Tuesday            | — | 23     |
| Friday,            | — | 26     | Saturday,          | — | 27     |
| <i>After term.</i> |   |        | <i>After term.</i> |   |        |
| Tuesday,           | — | May 30 | Wednesday,         | — | May 31 |

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taining, as the said *John* in bar to the avowry aforesaid hath above alledged: and this he is ready to verify: wherefore he prays judgment and a return of the cattle aforesaid, together with his damages, &c. to be adjudged to him, &c.

And the said *John Liddiard* as before says, that the said *Theodore Newton*, and all those whose estate the same *Theodore* then had in the said messuage and 47 acres and a half of land arable, meadow and pasture, with the appurtenances, have had, and from time out of mind have been accustomed to have, for themselves, their farmers and tenants, of the said messuage and the 47 acres and a half of land arable, meadow and pasture, with the appurtenances, common of pasture in the said place in which, &c. for all their commonable cattle in and upon their tenements aforesaid with the appurtenances, *levant and couchant* every year at all times of the year, as to their tenements aforesaid belonging and appertaining, in manner and form as he the said *John Liddiard* has above alledged: and this he prays may be inquired of by the country: and the said *Francis* does so likewise: therefore the sheriff is commanded, that he cause to come before the Lord the King on the octave of *St. Hilary* wheresoever, &c. twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same day is given to the parties aforesaid, &c.

*A Plea in bar to an Avowry, that the Plaintiff tendered to the Defendant sufficient amends for the Damages Feofans.*

AND the said *A.* pleads, that the said *C.* by reason of any thing above alledged, ought not to avow the taking of the cattle and chattels aforesaid in the said place wherein, &c. to be just (or ought not to justify) because he says, that after the said *C.* had taken the cattle and chattels in the place aforesaid, (to wit, [on such a day and year] at *W.* aforesaid, he the said *A.* tendered to the said *C.* 6 s. 8 d. which were sufficient amends for the damages done to him in the said place wherein, &c. which 6 s. 8 d. he then and there totally refused to accept, and unjustly detained the cattle and chattels aforesaid, against sureties and pledges, &c. until, &c. as he the said *A.* does above complain against him; and this he is ready to verify.

Wherefore, in as much as the said *C.* does above acknowledge the taking of the said cattle and chattels in the said place wherein, &c. he the said *A.* prays judgment and his damages, occasioned by the taking and unjustly detaining of the cattle and chattels aforesaid, to be adjudged to him, &c.

And the said *C.* protesting, that the 6 s. 8 d. were not sufficient amends for the damages aforesaid done to the said *C.* in the said

place where, &c. for plea says, that the said *A.* did not tender to the said *C.* the said 6 s. 8 d. for the damage done in the said place where, &c. as the said *A.* has above alledged; and this he is ready to verify; wherefore he prays judgment, and a return of the cattle and chattels to be adjudged to him, &c.

And the said *A.* as before says, that he did tender to the said *C.* the said 6 s. 8 d. for the said damages done him in the said place where, &c. as he has above alledged; and this he prays may be inquired of by the country.

*Avowry where the Defendant traverses the Place, &c.*

**A**ND the said *H.* by *J. T.* his attorney comes and defends the force and injury when, &c. and pleads, that in the said county of *D*— there is a place called *M*— *D*— and another place called *M*— in *E*— and another place called *M*— *J*— in *E*— aforesaid; without that, that in the said vill of *K*— there is, or at the said time when, &c. was, any place called or known by the name of *M*— only, and that he, at the said time when the said cattle is supposed to have been taken, took the said six oxen and eight cows above specified in the said declaration, and also an horse of the said (*plaintiff*) does above suppose by his said declaration, of all and singular which cattle aforesaid, one Sir *P. E. Knt.* then sheriff of the said county of *D*— granted a Replevin to the said (*plaintiff*) upon his plaint thereon; and this he is ready to verify; wherefore he prays judgment of the declaration aforesaid, and to have a return of all and singular the cattle aforesaid; and the said (*Defendant*) as bailiff to *J. B.* well acknowledges the taking of the said six oxen, eight cows, and one horse, in the said place called *M*— *D*— and justly, &c. because he says, &c.

*Plea.*

**A**ND the said *R. C.* pleads, that the said *T. L.* ought to avow the taking of the cattle aforesaid in the said place in which, &c. to be just, for the reason above alledged, nor ought they the said *A. W.* and *T. L.* as bailiffs to the said *T. L.* to acknowledge the taking of the cattle aforesaid in the said place in which, &c. to be just, for the same reason, because he says, that he the said *R. P.* at the said time when, &c. was, and long before had been possessed of and in a close of pasture in *B*— aforesaid, near adjoining to the said place called *P*—, in which, &c. and further, the said

said *R. P.* says, that the said *T. L.* and all those whose estates he the said *T. L.* now has, and at the same time when, *Ec.* had, of and in the close aforesaid called *P.* in which *Ec.* for so long a time as there is no remembrance of any man to the contrary, have made and repaired, and have been used and accustomed to make and repair the hedges and fences between the said close aforesaid called *P.* in which, *Ec.* and the said close of pasture of the said *R.* and the said *R.* further says, that before and at the time when, *Ec.* the hedges and fences between the said close in which, *Ec.* and the said close of pasture of the said *R. P.* were broken, laid open, and in great decay for want of repairing them, by which means the cattle of the said *R.* being thentofore put into his said closes of pasture, afterwards, and before the said time when, *Ec.* that is to say, upon the — day of *February* in the — year aforesaid, escaped out of the close of the said *R.* and by the hedges and fences aforesaid being broken, entered into the said close in which, *Ec.* and there remained until they the said *T. L. A. W.* and *T.* afterwards and before that the said *R.* had or could have any notice of the said cattle's being in the said place, in which, *Ec.* (to wit) at the said time when, *Ec.* took the said cattle in the said place in which, *Ec.* and unjustly detained them against sureties and pledges, in manner and form as the said *R.* does above complain thereof against them; and this he is ready to verify; wherefore, and inasmuch as the said *T. A. W.* and *J.* do above acknowledge the taking and detaining of the cattle aforesaid, he the said *R. P.* prays judgment, occasioned by the taking and unjustly detaining of the cattle aforesaid, to be adjudged to him, *Ec.*

To this plea in bar of the avowry the defendant demurred, and the plaintiff joined in demurrer, and judgment was given in the *Common Pleas* for the defendant, that the plaintiff's plea in bar was not good; upon which a writ of error was brought, and the counsel for the plaintiff in error argued, that the judgment was erroneous, and that the cattle could not be distrained, because they escaped for the default of fences, which upon the face of the record ought to have been repaired by the defendant *L.* But notwithstanding this the judgment was affirmed, and the court relied much upon the case in 10 *H. 7.* 21. *B.* where it is said, that if the cattle escape into any land, and the lord distrains them, such distress is good, and that it is not material whether they were *levant* and *couchant* or not; but *Saunders* in the report of the case takes notice, that this case, in his opinion, was hard to be maintained; for, says he, there is a vast difference between a lord's distraining within his seigniority and a lessor's distraining for rent reserved upon his own lease; for the lord has nothing to do with the land or the fences, and so it is not material to him whether the fences are in repair or not; but it is otherwise of a lessor, for he himself ought to repair the fences, or to take care that his tenant repairs them; for otherwise he would take



an advantage of his own wrong, which would be inconvenient; and this distinction (says he) seems to be warranted by the books of *Mich.* 14. & 15 *El. Dyer* 317, 318. 22 *Ed.* 4. 49. b. 7 *H.* 7. 1. 15 *H.* 7. 17.

But if the cattle escape into the land without any default of the fences, or that the tenant of the land is not bound to repair those fences, for default whereof the cattle escape and are distrained, it is not material to the lord or lessor, whether they are *levant and couchant* or not.

*Nota.* The case of *R.* and *O.* reported in 1 *Brownl.* 170. and in *Hob.* 265. seems to favour this opinion of *Saunders*; there the defendant avowed for rent reserved upon a lease for life, and the plaintiff in his plea in bar to the avowry shews, that the place in which *Ec.* did adjoin to the plaintiff's close, and that the cattle, against the plaintiff's will, did escape into the other close, and that he did presently follow the cattle, and before he could drive them out of the close, the defendant distrained them. The court held, that in as much as the beasts were always in the plaintiff's possession, and in his view the defendant could not distrain those cattle as the cattle of a stranger; but if he had permitted the beasts to have remained there by any space of time, tho' they had not been *levant and couchant* the lessor might have distrained them as the beasts of a stranger. In the report of this case in *Hob.* the opinion of the court does not appear, for it is there said, the case had been somewhat better for the tenant ought to maintain the fences.

### *L. against W.*

*T*———, (to wit) *T. W.* late of *T*——— in the county aforesaid, yeoman, was attached to answer to *W. L.* Gent. of a plea of trespass upon the case, &c. And whereupon the said *W.* by *A. B.* his attorney complains, that whereas on the — of *May* in the — year of the reign of the lord *Geo.* 2d and long before, and continually afterward until now, he the said *W. L.* was seised, and yet is now seised, of and in one close of land, with the appurtenances, called *L*———, lying and being in the parish of *T*——— aforesaid, and of one close of meadow, with the appurtenances, called *G*——— *I*———, lying and being in the parish aforesaid, and next adjoining to the said close called *L*———, in his demesne as of fee; and he the said *W. L.* and all those whose estate he the said *W. L.* now has, and for all that time had of and in the tenements aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have had, and have been used and accustomed to have,

have, a certain way, as well a footway as an horseway, and for their carts and carriages from the King's common highway in the parish of T——— afore said; which said King's way leads between the towns of T——— afore said and W——— in the county afore said, in, by and through a certain place called B——— W——— L———, lying within the parish of T——— afore said, and so unto and into a certain other place called L——— L———, and from thence unto and into the said close called L———, and so backwards from that close unto the King's way afore said, every year, at all times of the year through the way afore said, in form afore said described, as to his tenements afore said, with the appurtenances, belonging: nevertheless the said T. not being ignorant of the premises, but contriving and fraudulently intending him the said W. L. in this behalf unjustly to aggrieve and to hinder, and, as much as he could, to deprive him the said W. L. of the use of his way afore said, on the — day of May in the — year above said, with his carts and carriages, to wit, with the wheels thereof, the way afore said in the said place called B——— W——— L———, in so much spoiled and damaged, that the said way there became of no use to him the said W. L. and to the damage of him the said W. L. of 20*l.* and thereupon he brings suit, &c.

And the said T. by R. V. his attorney comes and defends the force and injury when, &c. and says, that the said W. ought not to have his said action against him, because protesting that the declaration afore said, and the matter in the same contained, are not sufficient in law to have the said action of the said W. to be maintained against him the said T. nevertheless for plea the said T. says, that one W. V. gent. on the said — day of May in the — year above said, and long before and continually afterwards until now was seised, and yet is seised, of and in one close of land called B——— W——— C———, with the appurtenances, in the parish of T——— afore said, in his demesne as of fee; and that he the said W. V. and all those whose estate he has, and for that time had, of and in his close afore said, with the appurtenances, from time whereof the memory of man is not to the contrary, have used, and had, and have been accustomed to use and have a certain way, as well a horseway as a footway, and for their carts and carriages from the said King's common way in T——— afore said, in the declaration afore said above specified, in, by, and through the said place called B——— W——— L———, and from thence unto, and into the said close of him the said W. V. called B——— W——— C———, and so backward from the same close called B——— C———, through the same way unto the King's common way afore said, in T——— afore said in every year, at all times of the year, at his will and pleasure; by which the said T. as servant of the afore said W. V. and by his command, on the said — day of May in the — year above said, with the carts and carriages of him the said W. V. from the King's common way afore said, in, by and through the said

said place called *B— W— C—*, and so back again, went, returned and passed by the way aforesaid in form aforesaid described, using that way, as it was well lawful for him to do; and so by going, returning and passing in, by, and through the same way be the said *T.* the soil of that way in the said place called *B— W— L—* with the wheels of those carts and carriages a little subverted, doing as little damage as he could in that way, which are the same spoiling and damaging of the aforesaid way in the said place called *B— W— L—*, whereof the aforesaid *M. L.* above himself now complains; and this he is ready to verify: wherefore he prays judgment if the aforesaid *M. L.* ought to have his said action against him the said *T.* &c.

And the said *W. L.* says, that he by any thing before alledged he ought not to be barred from having his said action thereof against the said *T.* because he says, that well and true it is that the said *W. V.* gent. on the said — day of *May* in the — year aforesaid, and long before, and continually afterwards until now was seised, and yet is seised of, and in the said close of land called *B— W— C—*, with the appurtenances, in the parish of *T—* aforesaid, in his demesne as of fee; and that he the said *W. V.* and all those whose estate he hath, and for the time aforesaid had of and in the close aforesaid, with the appurtenances, from time whereof the memory of man is not to the contrary, have used and had, and have been accustomed to use and have a certain way, as well a horseway as a footway, for his carts and carriages, from the said King's common way in *T—* aforesaid, in the declaration above specified, in, by, and through the said place called *B— W— C—*, and so backward from the said close called *B— W— C—*, by the same way unto the King's common way aforesaid, in *T—* aforesaid, in every year, at all times of the year, at his will and pleasure, as the said *T.* above in pleading thereof hath alledged: but he the said *W. L.* further saith, that the said *T.* in using the way aforesaid with his carts and carriages aforesaid from the King's common way aforesaid, in, by and through the said place called *B— W— L—*, and from thence unto, and into the said close called *B— W— C—*, and beyond the said close called *B— W— C—*, into a certain other close of him the said *W. V.* there called *W— L—*, and so backward from the said close called *W— L—* unto the said close called *B— W— C—* aforesaid, and so unto the King's way aforesaid through the way aforesaid, in form aforesaid described, unjustly and contrary to the form of the prescription aforesaid, went, returned and journeyed in going to the said close called *W— L—*, and from thence by returning with his carts and carriages aforesaid in form aforesaid, and by the way aforesaid, to wit, with the wheels of his carts and carriages aforesaid, the way aforesaid in the said place called *B— W— L—*, insomuch spoiled and damaged that the said way there became of no use to him the said



said *W. L.* as he the said *W. L.* hath thereof declared against him; and this he is ready to verify: wherefore he prays judgment and damages, by occasion of the premises, to be adjudged to him, &c.

And the said *T.* for that the said *W. L.* above hath acknowledged that the said *W. V.* and all those whose estate he hath, and had as before set forth, of, and in his close aforesaid called *B— W— C—*, with the appurtenances, from time whereof the memory of man is not to the contrary, have used, and had, and have been accustomed to use and have the way aforesaid leading between the King's common way aforesaid, and that close, by, and through the said place called *B— W— L—*, in every year, at all times of the year, at his will and pleasure, as the said *T.* above hath alledged; and so the way aforesaid by and through the said place called *B— W— L—*, doth not belong to the said tenements of the said *W. L.* only as he hath above supposed; and for that it was well lawful, and is lawful for him the said *W. V.* being in the said close called *B— W— C—*, from thence into his said other close called *W— L—*, and backward from thence into the said close called *B— W— C—*, to go and return at his will and pleasure, and this without any damage whatsoever to be done to any person thereby, as before prays judgment, &c.

Demurrer, and joinder in demurrer.

*H. against B. and others.*

*Yorkshire, (to wit)* *R.* *B.* late of *S—* in the county aforesaid, yeoman, *G. B.* late of *G.* in the county aforesaid, yeoman, *J. Y.* late of *S—* aforesaid in the county aforesaid, yeoman, and *G. T.* late of *S—* aforesaid in the county aforesaid, yeoman, were summoned to answer to *M. H.* widow, of a plea wherefore they took the cattle of her the said *M.* and unjustly detained them against gages and pledges, &c.

And whereupon the said *M.* by *J. D.* her attorney complains, that the aforesaid *R. G. J. Y.* and *G.* on the — day of *November* in the — year of the reign of the lord the now King, at *T—*, in a certain place there called the *S—*, took the cattle of her the said *M.* to wit, four horses, and unjustly detained them, against gages and pledges, until, &c.

Whereupon she saith that she is injured, and hath damage to the value of 30*l.* and thereupon she brings suit, &c.

And

And the aforesaid *R. B. G. B. J. Y. and G. T.* by *W. B.* their attorney, come and defend the force and injury when, &c. and as bailiffs of *R. K.* gent. executor of the last will of *F. K.* Esq; deceased, well acknowledge the taking of the cattle aforesaid, in the said place in which &c. and justly, &c. because they say, that the same place in which the taking of the cattle aforesaid is supposed to be done contains, and at the said time when the taking of those cattle is supposed to be done, did contain in itself one stable with the appurtenances, in *T*— aforesaid, which said stable with the appurtenances, is, and at the said time when, &c. and also from time whereof the memory of man is not to the contrary, hath been parcel of the manor of *T*—, otherwise *T*—, with the appurtenances, in the county aforesaid; of which said manor, with the appurtenances, whereof the said place in which, &c. is, and at the said time when, &c. was, and also for all the time aforesaid hath been parcel, the Right Honourable *W.* late Earl of *S*— deceased, in his life-time long before the said time when, &c. to wit, on the — day of — in the — year of the reign of the lord *George* the second, late King of *England*, &c. (among other things) was seised in his demesne as of fee; and being so seised thereof, the said late Earl afterwards in his life-time, and before the said time when, &c. to wit, on the said — day of — in the — year of the reign of the lord the late King above said; at *T*— aforesaid, by his certain writing indented, then and there made between the said late Earl, by the name of Right honourable *W.* Earl of *S*— Knight of the most noble Order of the Garter, and one of his Majesty's privy council, of the one part, and the said *F. K.* in his life-time, by the by the name of *F. K.* of *St. P*— *C*— *G*— in the county of *M*— Esq; of the other part; one part of which, sealed with the seal of the said late Earl, the aforesaid *R. B. G. J. and G.* bring here into court, the date whereof is the same day and year, for and in consideration of the good and faithful service of the aforesaid *F. K.* then done, and then afterwards to be done and performed, for the said late Earl, and also of five shillings of good and lawful money of *E*— to him the said late Earl then in hand paid, and for divers other good causes and considerations him thereunto moving, had given and granted, and by the same writing indented for himself and his heirs gave and granted to the said *F. K.* a certain annuity or yearly rent-charge of sixty-pounds of good and lawful money of *B*—, to be issuing and payable out of all that manor or lordship of *T*—, otherwise *T*— aforesaid, with all and singular its rights, members and appurtenances, in the aforesaid county of *Y*—, and out of all and singular the messuages, cottages, lands, tenements and hereditaments whatsoever within the towns, villages, parishes, hamlets, precincts, or territories of *C*—, *W*—, *O*— and *B*—, and every or any of them in the said county of *Y*—, and out of all and singular the messuages, cottages, houses, edifices, buildings, barns, stables, orchards, gardens, lands, tenements, mea-

dows, pastures, feedings, commons, common of pasture, moors, marshes, rents, reversions, services, profits, commodities, emoluments, and hereditaments whatsoever, with the appurtenances to the said manor or lordship belonging, or before used, taken, reputed, occupied or enjoyed as part or parcel thereof; To have, and to hold, yearly to receive, perceive and take the said annuity or yearly rent-charge of 60*l.* to him the said *F. K.* and his assigns, from and immediately after the date of the same writing, for and during the term of his natural life, to be paid at the two feasts or days of payment of rent in the year, that is to say, at the feast of ———, and the feast of Saint ——— the bishop in winter, by equal portions.

The first payment to begin and be made upon the feast of ——— next ensuing the date of the said writing.

And if it should happen that the said annuity or yearly rent-charge of 60*l.* or any part thereof, should be in arrear or unpaid in part or in the whole for the space of 20 days next after any of the said feasts in which it ought to be paid as aforesaid, being lawfully demanded, that then and in such case it should be lawful, to and for the said *F. K.* or his assigns, into the said manor or lordship, lands, tenements and hereditaments before mentioned, or into any part or parcel thereof, to enter and distrain for the said annuity or yearly rent-charge of 60*l.* or such part thereof as should happen to be in arrear and unpaid.

And the distress or distresses then and there found, to take, lead, chase and carry away and impound, and impounded to detain and keep until he or they should be fully satisfied and paid the said annual rent and arrearages thereof, if any should be, as by the said writing indented here brought into court (among other things) is more fully manifest and appears.

By virtue of which said gift and grant, the said *F. K.* was seised of the aforesaid annuity or yearly rent of 60*l.* in his *demesne* as of freehold for the term of his life, and thereupon being so seised of the rent aforesaid, the said *F. K.* afterwards and long before the said time when, to wit, on the ——— day of ——— in the ——— year of the reign of the lord *G.* the now King of *England, &c.* at *T* ——— aforesaid made his last will and testament in writing, and by the same will made and appointed the said *R. K.* sole executor thereof.

And afterwards and after the feast of ——— in the ——— year of the reign of the said lord the King aforesaid, and before the said time when, *&c.* to wit, on the ——— day of ——— in the same year at *T* ——— aforesaid the said *F. K.* died seised of such his estate of and in the rent aforesaid; after whose death, and before the said time when, *&c.* to wit, on the ——— day of ——— in the ——— year aforesaid, at *T* ——— aforesaid, the said *R. K.* took upon himself the burthen



of the execution of the will aforesaid, and proved the same will according to the Ecclesiastical laws of this kingdom of *England*, and the said *R.* was executor of the will aforesaid at the time when, &c. and always after the death of the said *F. K.* hitherto hath been, and yet is so.

And because — of the rent aforesaid for 17 years, ending at the said feast of — in the — year aforesaid to the said *F. K.* in his life-time, and to the said *R. K.* after the death of him the said *F.* for the space of 20 days next after that feast at the same time when, &c. were in arrear and unpaid, they the said *R. B. G. B. J. Y.* and *G.* as bailiffs of the said *R. K.* executor of the said will of the said *F.* well acknowledge the taking of the cattle aforesaid in the said place when, &c.

And justly, &c. in parcel of the lands and tenements aforesaid (as a distress of the said *R. K.* as executor of the said will of the said *F. K.* in form aforesaid, according to the form of the statute in such case made and provided) charged and bound for the said — of the rent aforesaid so being in arrear.

And the said *R. B. G. B. J. Y.* and *G.* bring here into court the letters testamentary of the said *F. K.* whereby it sufficiently appears to the court here that the said *R. K.* is executor of the will aforesaid, and ought to have the administration, &c.

And the said *M. H.* says, that the said consufance of the aforesaid *R. G. J.* and *G.* above made, and the matter in the same contained, are not sufficient in law for them justly to acknowledge the taking of the cattle aforesaid in the said place in which, &c. and that she to that consufance in manner and form aforesaid made, hath no necessity, nor is she bound by the law of the land to answer; and this she is ready to verify.

Wherefore for want of a sufficient consufance in this behalf the aforesaid *M. H.* prays judgment and her damages, by occasion of the taking and unjustly detaining the said cattle, to be adjudged to her, &c.

And for cause of demurrer in law upon the said consufance the said *M.* according to the form of the statute in such case made and provided, shews, and to the court demonstrates this cause following, to wit, for that it does not appear by the said consufance that the said — were ever demanded, or that any part thereof was ever demanded, &c.

And the said *R. B. G. B. J. Y.* and *G. T.* shewn sufficient matter in law in their cognizance to acknowledge justly the taking

of the cattle aforesaid in the said place in which, &c. as they have above alleged, which they are ready to prove; which said matter the said *M. H.* has not denied, nor in any manner answered to it, but that averment has wholly refused to admit, therefore pray they judgment and a return of the cattle aforesaid, together with their damages, costs and charges by them about their suit in this behalf laid out, according to the form of the statute, to be adjudged to them, &c.

*Directions for entering an Inquisition in Replevin, according to Statute of 17 Car. 2. on a judgment for the Avowant on a Demurrer, where a writ of Inquiry was awarded to inquire of the value of the Distress, and a Judgment thereon.*

**A**T which day the said *T. S.* (*i. e.* the plaintiff) comes before our lord the King at *W*——, by his attorney aforesaid, and the sheriff (to wit) *J. A.* Esq; returns an inquisition taken before him at the castle of *Y*—— in the county aforesaid, on the—— day of —— in the —— year of the reign of his present Majesty, whereby it is found that the said six hogheads of allum, at the time of the taking thereof, were worth ——

For the value of the said six hogheads of allum, part of the said rent being in arrear as aforesaid, found by the said inquisition in manner aforesaid, and his damages sustained by reason of the premises here adjudged by the said court of our said sovereign lord the King,, according to the form of the statute in such case made and provided, to the said *T. R.* to — with his consent, for his expences and costs laid out by him about his suit in this cause, which said value, expences and costs, do in the whole amount —— and be the said *J. M.* amerced, &c.

*An Inquisition and Judgment on the same Statute on a Judgment on a Demurrer for the Avowant, and a Writ to inquire of the Monies in Arrear, and of the Value of the Distress, and Judgment thereon.*

**A**ND thereupon they the said *T. A. W.* and *T.* according to the form of the statute in such case made and provided, pray his Majesty's writ to be directed to the sheriff of the county aforesaid, to inquire what monies were in arrear for the rent aforesaid, at the time of the distress made as aforesaid, and the value [or price] of the cattle taken; therefore the sheriff is commanded that by the oath of twelve good and lawful men of his bailiwick he diligently inquire

what sums of money were in arrear for the rent aforesaid at the time of the distress made, and what was the value of the cattle distrained according to the true value thereof.

And the inquisition which, &c. the sheriff should return, or make appear here in three weeks from the day of St. *Michael*, under the seal, &c. and the seals, &c. at which day *T. A. W.* and *T.* came here by their said attorney, and the sheriff, (to wit) *R. M.* Esq; now returns an inquisition taken before him at the castle of — in the county aforesaid, on the — day of — last past, by oath of twelve good and lawful men, whereby it is found that the said sums of the money in arrear for the rent aforesaid, to the said *T. L.* at the time of the distress were — and that the cattle distrained, according to the true value [or price] thereof, were worth —

Therefore it is adjudged, that the said *T. A. W.* and *T.* do recover against the said *R. P.* the said — for the value of the cattle aforesaid, being part of the rent in arrear as aforesaid, found by the said inquisition in the manner aforesaid, and his damages by reason of the premisses, by this court adjudged to the said *T. A. W.* and *T.* at their request, by the discretion of the justices here, for his expences and costs laid out by them in this suit, according to the form of the statute in such case made and provided, to — which value, expences and costs, do in the whole amount to — &c.

## FORMS of WRITS.

### *Retorno Habendo.*

**G**EORGE the Third, &c. To the sheriff of — greeting:  
Whereas *J. S.* late of the parish of — in your county, Esq; was summoned to be in our court before us, to answer to *W. P.* Esq; of a plea (or in an action) wherefore on the — day of — in the — year of our reign, at the parish of — in your county, in a certain place there, called a — in — he took the goods and chattels of the said *W.* (to wit) one bed, one bedstead, &c. and unjustly detained them against sureties and pledges, until, &c.

And the said *J. S.* came into our same court before us, and alledged and pleaded, that the same *W.* ought not to have or maintain his said action thereof against him, because he said, that as to the one bed, one bedstead, part of the goods and chattels aforesaid in the said declaration mentioned, that the property at the said time



of taking them were the said *J.*'s, and this he was ready to verify.

And as to one couch, ten books, &c. the residue of the said goods and chattels in the declaration of the said *W.* mentioned, the said *J.* pleaded, that at the time of taking those goods and chattels the property was in and belonged to one *R. F.* without that, that the property of the said residue of the goods and chattels in the declaration mentioned, at the time when, &c. was the property of the said *W.* as by the said declaration above was supposed; and this he was ready to verify and prove; wherefore he prayed judgment, if the aforesaid *W.* ought to have or maintain his said action against him for the same, &c.

And he also prayed a return to be adjudged to him of all the goods and chattels aforesaid, together with his damages, expences and costs laid out by him about his suit in that behalf.

And the said *W.* replied, that the plea of the said *J.* above pleaded, and the matter therein contained, were not sufficient in law to preclude the said *W.* from having his said action against the said *J.* for the same, and that he was not under a necessity, nor was bound by the law of the land to answer in any manner to that plea, in the manner and form as the same was pleaded; which he was ready to verify.

Wherefore, for want of a sufficient answer in that behalf, he the said *W.* prayed judgment, and his damages occasioned by the taking and unjustly detaining the goods and chattels, to be adjudged to him, &c.

And the said *J.* rejoined, that the plea aforesaid by him pleaded in the manner and form aforesaid, and the matters therein contained, were good and sufficient in law to preclude the said *W.* from having his action aforesaid thereof against the said *J.* which plea, and the matters therein contained, he the said *J.* was ready to verify and prove, as the court should require.

And because the said *W.* had not answered to that plea, nor in any wise had denied the same, he the said *J.* as above prayed judgment, and a return of all and singular the goods and chattels aforesaid, together with his damages, &c. to be adjudged to him, &c.

And such proceedings were thereupon had in our same court before us, that it was adjudged, that the said plea by him the said *J.* above pleaded, and the matters therein contained, were good and sufficient in law to preclude the aforesaid *W.* from having his said action against the said *J.* and it was also considered by our same court before us, that the said *W.* should take nothing by his said writ,

writ, but for his false claim therein should be in *mercy*, (or *amerced*) &c. and that the aforesaid *J. S.* should go thereof without a day, (or *should for ever be dismissed the court*), &c. and that he should have a return of the goods and chattels aforesaid, to be delivered to him for ever irreplegiabie.

And further, it was considered in our said court before us, that the aforesaid *J.* ought to recover his damages against the said *W.* by reason of the premisses: therefore we command you, that without delay, you cause the said *J.* to have a return of the goods and chattels irreplegiabie, and that you shall not deliver those things of which you have made mention, which belong to the complaint of the said *W.* without our writ, which shall expressly mention the said judgment; and in what manner you shall execute this writ, do you make appear to us, wherefoever we shall then be in *Great Britain*, on (*the return of the writ*).

We command you likewise, that by the oath of 12 honest and lawful men of your bailiwick, according to the form of the statute in that case made and provided, you diligently inquire what damages the said *J.* has sustained, as well by reason of the premisses, as for his expences and costs laid out by him about his suit in that behalf; and the inquisition which you shall take thereon do you return to us at the day aforesaid, wherefoever we shall then be in *Great Britain*, under your seal, and the seals of those by whose oath you shall take such inquisition, together with this our writ to you directed for that purpose. Witness *Wm. Lord Mansfield*, &c.

*The Return of a Retorn' Habend' and a Writ of Enquiry by the Bailiff of the Liberty, and a Non omittas and a Capias awarded.*

AT which day comes here the said defendant by his attorney aforesaid, and the sheriff, (that is to say) *W. H. Esq*; now returned here, that in order to have an execution of the writ aforesaid to him directed, he made a mandate to *J. H. Esq*; bailiff of the liberty of our Sovereign Lord the King, of his duchy of *L——* in the county aforesaid, who hath full power of returning all writs, and of executing the same within the liberty aforesaid, to whom the execution of the writ aforesaid doth entirely belong to be made; for that no execution of the writ aforesaid, within the liberty aforesaid, in his bailiwick, could be made by him, which bailiff made a return to the said sheriff, upon the mandate aforesaid, that before the coming of the mandate aforesaid to his hands, the cattle, goods and chattels aforesaid were eloigned by the said plaintiff to places

places to the said bailiff unknown, so that he could not cause the cattle, goods and chattels aforesaid of the said (*defendant*) to be returned, as by the warrant aforesaid he was commanded.

The said bailiff also returned, to the said sheriff an inquisition taken before him at *F.* within the liberty aforesaid in the county aforesaid, on the 1st day of ——— last past, by the oath of twelve, &c. by virtue of the warrant aforesaid directed by the sheriff upon the writ aforesaid to the said bailiff, by which it was found, that the said defendant sustained damage by reason of the premises, besides his costs, to ——— and for those costs and charges to ———

Therefore it is adjudged, that the said defendant do recover against the said plaintiff his damages aforesaid to ——— by the inquisition found in manner aforesaid; and also ——— pounds to the said defendant, at his request, for his costs and charges aforesaid adjudged by the court by way of increase, which damages do in the whole amount to ——— &c.

And hereupon the sheriff is commanded, that he do not omit, by reason of any liberty of the duchy of ——— aforesaid; but that of other cattle, goods and chattels of the (*plaintiff*) to the value of the cattle, goods and chattels aforesaid before taken, he take *in withernam*, and deliver them to the said defendant, to be detained by him until the cattle, goods and chattels aforesaid before taken be delivered by the (*said plaintiff*) and in what manner, &c. the sheriff shall make appear, &c.

*A Return' Habend' against the plaintiff, for default of his Plea in Bar to an Avowry.*

**G**EORGE the Third, &c. Greeting, Wheareas *A. B.* lately in our court before us at ———, was summoned to answer to *C. D.* in an action, wherefore he took nine cows, the cattle of him the said *C.* and unjustly detained them, against sureties and pledges, &c. and the said *A.* appearing in our same court before us, for a certain reason by him alledged in our same court, in his own right, and the right of *S.* his wife, well avowed the taking of the said cattle in the place in which, &c. to be just, for — rent due and in arrear from him the said *C.* to the said *A.* and *S.* for one half year, ending at the feast of the annunciation of the blessed Virgin *Mary* next before, &c. [*as in the avowry*] for one messuage, &c. with the appurtenances in *W.* demised by them the said *A.* and *S.* to the said *C.* whereupon the said *C.* tho' solemnly called, did not appear, nor doth



doth further prosecute his said writ; wherefore it was considered in our same court before us, that he and his pledges for prosecuting should be amerced; and that the said *A.* might depart the court thereon without a day, and should have a return of the said cattle: Therefore we command you, that without delay you return the said cattle to the said *C.* and you shall not deliver them at the complaint of the said *R.* without our writ, which shall expressly mention the said judgment; and in what manner you execute this writ, you make appear to us in three weeks from the day of *St. Michael*, wheresoever, &c. and have you there this writ. *Witness, &c.*

*A Return' Habend' upon a judgment against the Plaintiff by Default.*

**G**EORGE the Third, &c. Greeting: Whereas *T. E.* lately in our court before us at ———, was summoned to answer to *R. B.* in an action wherefore he took seven cows, the cattle of him the said *R. B.* and unjustly detained them, against sureties and pledges, &c. as he alledged; and the said *R.* afterwards made default in our court before us; wherefore it was considered in our same court before us, that he and his pledges for prosecuting should be amerced, and that the said *T.* might depart the court without a day, and should have a return of the cattle aforesaid: Therefore we command you, That without delay you return the said cattle to the said *T.* and you shall not deliver them at the complaint of the said *R.* without our writ, which shall expressly mention the said judgment; and in what manner you execute this writ, you shall make appear to us in three weeks from the day of *St. Michael*, wheresoever &c. And have you there this writ. *Witness, &c.*

*Form of a Writ of second deliverance in K. B.*

**G**EORGE the Third, to the sheriff of ———, Greeting: If *T. W.* shall give you security that he will prosecute his claim, and also to return the cattle, (which in our court before us were lately adjudged to *T. J.* through the default of the said *T. W.*) if a return thereof shall be adjudged; then do you cause those cattle without delay, (or forthwith) to be delivered to the said *T. W.* and by sureties and safe pledges compel the said *T. J.* that he be before us in three weeks from the day of *St. Michael*, wheresoever we shall then be in *England*, to answer to the said *T. W.* for taking and unjustly

justly detaining the cattle aforesaid; and have you there the names of the pledges, and this writ: Witness *Wm. Lord Mansfield*, the 28th day of *November*, in the ninth year of our reign.

*Another Form of this Writ in K. B.*

**G**EORGE the second, &c. To the sheriff of *Essex*, greeting. If *G. D.* shall give you security that he will prosecute his claim, and also return the cattle, which in our court before us were lately adjudged to *A. B.* through the default of the said *C.*; we command you, That if by means of our writ *de Return' Habendo*, lately directed to you for that purpose, you have made a return of the said cattle to the said *G. D.* then do you cause to be delivered to the said *G. D.* and by sureties and safe pledges, compel the said *A.* that he be before us on the octave of *St. Hilary*, wheresoever we shall then be in *England*, to answer to the said *G.* for taking, and unjustly detaining, the cattle aforesaid; and have you there the names of the pledges, and this writ. Witness, &c.

*The Form of the Entry of an Award of a Writ of second Deliverance in K. B.*

**T.** *F.* by *A. B.* his attorney, offers, (or tenders) himself on the 4th day against *W. T.* of a plea, (or in an action) wherefore he took the cattle of the said *W. T.* and unjustly detained them, against sureties and pledges; and he came not, and the plaintiff was there, &c. Therefore he and his pledges, to wit, *J. D.* and *R. R.* are amerced, &c. and the said *T. F.* may depart the court therefrom without a day, &c. and may have a return of the cattle aforesaid, &c. and afterwards, (to wit) on the octave of *St. Martin* then next following, before our Sovereign Lord the King at *Westminster*, comes the said *W.* by *J. B.* his attorney, and by virtue of the statute in such case made and provided, prays his Majesty's writ of *second deliverance*, &c. and it is granted him, &c. returnable on the octave of *St. Martin*, wheresoever, &c. the same day is given to the *T. F.* &c.

Note. The difference between this writ in the Common Pleas from the former, is no otherwise than at the first asterisk in the first writ, before you say, which in our court before our justices at *Westminster* were adjudged to *T. J.* through the default of the said *T. W.* At the second

*asterisk you say*, that he be before our justices at *Westminster*, in three weeks from the day of *St. Michael*, to answer, &c.

*The Form of a Writ of Second Deliverance after Bail taken in C. B.*

**G**EORGE the third, &c. To the sheriff of *Essex*, greeting. Because *L. B.* in our court, before our Justices at *Westminster*, hath given you security that he will prosecute his claim, and will also make a return of those cattle which in our same court were adjudged to *S. R.* through the default of the said *L.* if a return thereof be adjudged to him: Therefore we command you, that without delay you cause a mare which you have taken in *withernam*, of the cattle of the said *L.* to the value of the cattle formerly taken, to be delivered to the said *L.* and compel the said *S.* by sureties and safe pledges, that he be before our Justices at *Westminster* on the octave of *St. Hilary*, to answer to the said *L.* for taking and unjustly detaining the cattle aforesaid; and have you there the names of the pledges, and this writ. Witness Sir *W. D. G.* Knight, the 28th day of *November*, in the ninth year of our reign.

*The Sheriff's Return on this Writ.*

**B**Y virtue of this writ to me directed, I have caused to be delivered to the within named *L.* his cattle within mentioned, as I am within commanded to do: The pledges within named are *J. D.* and *R. F.*

*J. W.* Esq; Sheriff.

*The Form of the Writ of Capias in Withernam.*

**G**EORGE the third &c. To the sheriff of *Suffolk*, greeting. Whereas we lately commanded you by our writ, that whereas *T. B.* gent. had been attached by our writ of second deliverance, to appear in our court before us, to answer to *J. S.* in an action, wherefore he took the cattle of the said *J.* and unjustly detained them against sureties and pledges, and the said *J. S.* in our same court made default; wherefore it was considered in our same court, that the said *T. B.* should depart hence without a day, and that the said *J. S.* and his pledges for prosecuting should be amerced; and that



that the said *T. B.* should have a return of the cattle aforesaid irreplegiable; and that you without delay should make a return of those cattle to the said *T. B.* to be detained by him irreplegiable; and in what manner you should execute that writ, you should make known unto us [*such a return*] wheresoever we should then be in *England*; and you at that day returned unto us, that the cattle aforesaid were eloined by the said *T. S.* to places unknown to you, so that you could not return or deliver those cattle to the said *T. B.* as you was commanded by the said writ; therefore we command you, that you take so many cattle of the said *J. S.* to the value of the cattle aforesaid, before taken by the said *J. S.* in *Withernam*, and deliver them to the said *T. B.* to be kept by him irreplegiable, until you can make a return of those cattle before taken to the said *T. B.* and in what manner you shall execute this our mandate, do you make appear to us on the octave of *St. Hilary*, wheresoever we shall then be in *England*; and that you cause further to be done therein, what of right, and according to the laws and customs of this our kingdom of *Great Britain*, we shall see meet to be done. We also command you, that if the said *T. B.* shall make you secure of prosecuting his claim, and of returning the chattels aforesaid, if a return thereof should be adjudged, then do you compel the said *J. S.* by sureties and safe pledges, that he be before us [*such a return*] wheresoever we shall then be in *England*, to answer as well to us for the contempt, as to the said *T. B.* for his damage and injury done him in this case: And have you there this writ. Witness, &c.

*The Form of the Writ of Capias in Withernam, on a Writ of Pluries Replegiari Facias.*

**G**EORGE the third, &c. To the sheriff of *E.* greeting. Whereas we have often commanded you, that you should justly and without delay grant a replevin to *R. E.* of his chattels (to wit) of those which *T. T.* and *J. C.* had taken and unjustly detained (as it is said) according to our writ before delivered to you, or that you should be before us [*such a return*] wheresoever we should then be in *England*, to shew us a reason, why you neglected to execute our mandates so often directed to you: And you at that day made a return to us, that the chattels aforesaid were eloined by the said *T. T.* and *J. C.* out of your bailiwick to places to you unknown, so that you could in no wise grant a replevin thereof to the said *R.* Therefore we command you, &c.

Note. If the sheriff do return on the *Pluries repleg'*, that he has not sent unto the bailiff of the liberty who has return of writs, &c. and that the

*bailiff has given answer that he cannot execute the writ because he cannot have a view of the cattle or goods which were taken; then the court in which such return is made, shall award a writ of withernam, directed unto the sheriff, and the sheriff shall thereupon make his precept unto the bailiff of the liberty, and if the bailiff of the liberty does not make a return thereof unto the sheriff, then the sheriff shall return the whole matter in court, and thereupon the court shall award a writ of withernam and a non omittas with the same.*

*The Form of a Writ of Withernam, with a Non Omittas.*

**G**EORGE the third, &c. To the sheriff of *M.* greeting. Whereas we have many times commanded you, &c. (until) or could not execute our command many times directed to you, thereupon, &c. *T.* of *G*—— bailiff of our liberty of *C*——, whom you have made to have the return of our writ, has answered you, that he could not do execution of that writ, because he could not have a view of the cattle aforesaid, as you have signified to us; wherefore we command you, that without delay you should take the cattle of the aforesaid *M.* in your bailiwick in *withernam*, and detain them until you could replevy to the same *A.* his cattle, &c. according the tenor of our command, &c. thereupon to you directed, or should signify to us the cause, &c. why you could not, &c. and you have returned to us that the same *T.* bailiff of the liberty aforesaid, whom you have made to have the return, &c.; has given you no answer, thereupon we command you, that you do not omit because of the liberty aforesaid, but that you enter into, and take, &c.

*Form of a Capias in Withernam, on a Retorno Habendo, after an Avowry and a Ca. Sa. against the Party for the Damages.*

**G**EORGE the third, &c. To the sheriff of the city of *G*—— greeting. Whereas *J. P.* was lately summoned in our court before us, to answer to *J. W.* of a plea, [or in an action] wherefore he on the 28th day of *April*, [in such a year] at the city of *G*—— (to wit) in a place there called *P*——, had taken the cattle of the said *J.* to wit, twenty sheep, and impounded and unjustly detained them, against sureties and pledges, until, &c. (as he declared); and the said *J. P.* appearing in our said court, for a certain reason therein alledged by him, well avowed the taking of the said cattle in the said place where, &c. to be just, for damage seasant therein; and

and the said *J. W.* afterwards in our same court made default: Wherefore it was considered there, that they and their pledges for prosecuting, should be amerced, &c. and that the said *J.* should be dismissed therefrom without a day; and that he should have a return of the cattle aforesaid: Therefore we lately commanded you, that you should without delay make a return of the cattle aforesaid to the said *J. P.* and that you should not deliver them at the desire of *J. W.* without our writ, which should expressly mention the judgment aforesaid; and in what manner you should execute that precept, you should make appear to us [on the return] wheresoever we should then be in *England*: We also lately commanded you, that, according to the statute in such case made and provided, you should diligently inquire, by the oaths of honest and lawful men of your bailiwick, what damages the said *J. P.* hath sustained, as well by reason of the premisses, as for his expences and costs laid out by him about his suit in that behalf; and that you should return to us, at the time aforesaid, the inquisition which you should take thereon, under your seal and the seals of those persons by whom you should take the inquisition, together with this writ; and you at that day returned to us, that the said cattle had been eloiigned by the said *J. W.* to places unknown to you; for which reason you could not return those cattle to the said *J. P.*; and you also returned a certain inquisition taken before you in the city of *G*—— in the county of the said city, on the 19th day of *April* [in such a year] whereby it was found, that the said *J.* had sustained damages by reason of the premisses, besides his expences and costs laid out by him about his suit in that behalf, to 10*s.* and his expences and costs to 2*d.* Therefore it was adjudged, that the said *J. P.* should recover against the said *J. W.* his damages aforesaid found by the inquisition aforesaid; and also 10*l.* awarded by our court before us to the said *J. P.* for his expences and costs by way of increase; which damages in the whole amounted to 10*l.* 10*s.* 2*d.* and the said *J. W.* should be amerced; Therefore we command you, that you take so many cattle of the said *J. W.* in your bailiwick, in *withernam*, and without delay cause them to be delivered to the said *J. W.* to be detained by him irreplegiabie till he will make a return of the said cattle before taken to the said *J. B.*; and in what manner you shall execute this our writ do you make appear to us on the octave of *St. Hilary*, wheresoever we shall then be in *England*: We command you also, that you take the said *J. W.* if he shall be found in your bailiwick, and keep him safely, so that you have his body before us at the time aforesaid, wheresoever we shall then be in *England*, to satisfy the said *J. P.* for the damages aforesaid; and have you there then this writ. Witness, &c.



*The Form of a Writ of Withernam out of Chancery, commanding him to do Withernam, and to do Execution of the first Judgment.*

**G**EORGE the third, To the sheriff of *Middlesex* greeting. *A.* has shewn unto us, that *B.* and *C.* had unjustly taken and detained the cattle of the aforesaid *A.* and the same *A.* presented before you for replevyng to him the cattle aforesaid, according to the law and custom of our kingdom; and although it was testified by *I.* your bailiff, whom you sent to replevy the cattle aforesaid of the said *A.* and found by an inquisition made in your full county, (as the custom is) that the same bailiff could not have a view of the same cattle to replevy them to the said *A.* wherefore it was considered in your full county, that the cattle of the aforesaid *B.* and *C.* in your bailiwick should be taken in *withernam*, and detained until his cattle aforesaid could be replevied to him the said *A.* according to the law and custom of our kingdom; yet the said *A.* has not yet obtained execution of the consideration aforesaid, to the no little damage and grievance of him the said *A.*; and because we are willing to relieve the aforesaid *A.* in this matter, we command you, if it be so, that you take the cattle of the aforesaid *B.* and *C.* in *withernam*, and detain them until you can replevy to the same *A.* his cattle aforesaid, according to the law and custom of our kingdom of *England*, and according to the consideration aforesaid, &c.

The sheriff may award a writ of *withernam* or replevin sued by the plaintiff, if it be found by inquest in the county, that the cattle are cloigned according to the bailiff's return, &c.

But on the writ of *withernam* awarded in the county, if the bailiff do return, that the other party has not any thing, &c. he shall have an *alias* and a *pluries*, and so infinitely and has no other remedy there.

On a writ of *withernam* returned in the *King's Bench* or *Common Pleas*, if the sheriff do return that the party has not any thing there, a *capias* shall be awarded against him, and exigent and process of outlawry.

In a writ of replevin sued by writ at the *pluries* returnable, the sheriff does return, That the beasts are cloigned, &c.; now, if the defendant appear, the plaintiff shall not have a writ of *withernam*, because the defendant may gage deliverance, and if the defendant's cattle be taken

taken in *withernam*, they shall not be delivered to the plaintiff, but the sheriff shall keep them until, &c. and the same appears by the words of the writ.

In a writ of *replevin* at the *pluries* returnable, the sheriff does return, that the beasts are eloined, &c. and the defendant does appear, and pleads, that he did not distrain them, then the plaintiff shall not have a writ of *withernam*. And the same if the defendant at the *pluries* returned that he had appeared, and pleads that the cattle are dead in default of the plaintiff, then the plaintiff shall not have a writ of *withernam*.

The defendant in some cases shall have a writ of *withernam* against the plaintiff, if the defendant has a return awarded for him, and he sues a writ *de retorno habendo*, and the sheriff return on the *pluries*; That the beasts are eloined, &c. he shall have a writ of *scire facies* against the pledges, &c. according to the statute of *Westm.* 2. and if they have nothing, then he shall have a writ of *withernam* against the plaintiff of his cattle.

*The Writ de Replegiare de Averiis.*

IF a man take more live cattle than one beast, then the writ is such :

*GEORGE* the third, &c. We command you, that justly, and without delay, you cause to be replevied the cattle of *B.* which *D.* took and unjustly detains, as it is said, and afterwards thereupon cause him justly to be removed, that we may hear no more clamour thereupon for want of justice, &c.

If he take but one live beast, then the writ shall be,

*GEORGE* the third, &c. We command you, that you cause to be replevied to *B.* his certain horse, or his certain labouring beast, or his ox, &c.

And if a man takes dead chattels, then the writ shall be,

*GEORGE* the third, &c. We command you, &c. that you cause to be replevied to *B.* his goods and chattels. And in the court he ought to declare of divers things.

If he takes but one thing, which is a dead chattel, then the writ shall be,

*GEORGE*

GEORGE the third, &c. We command you, &c. that you cause to be replevied to B. a certain net, or a certain swarm of his bees, or a certain iron of his mill.

If the sheriff doth nothing upon this writ, then he shall have an *Alias repleg' fac*, &c. and in the same writ he may have this clause; Or signify to us the cause why you would not or could not execute our command heretofore directed to you thereupon, &c. And then this writ shall be returned into the King's Bench or Common Pleas. And if he does not serve this writ, then he shall have a *pluries* returnable into the King's Bench or Common Pleas. And in the *pluries* is always this clause, or signify to us the cause; but not in the *alias repleg'*, if not that the party will have it put in the writ. And the plaintiff may sue all these writs together, viz. the *replevin*, the *alias*, and the *pluries*, and deliver them unto the sheriff all at one time, if he see so good. And if the sheriff does not return the *pluries*, then the plaintiff may have an *attachment* against the sheriff, directed unto the coroners.

And it appears by the register, that if the sheriff return upon the *replevin*, *sicut alias* or *pluries*, that he has sent unto the bailiff of the franchise, &c. who has given him no answer, or that he will not make deliverance, &c. then the plaintiff shall have a *non omittas* unto the sheriff, that he enter into the franchise and make return; and if the sheriff doth not do so, he shall have an *alias non omittas* directed unto the sheriff, and afterwards a *pluries non omitt'*, &c. But it seems that return, that I commanded the bailiff of the liberty, &c. who gave me no answer, or the return that the bailiff will not make deliverance of the cattle, are not good returns. For by the *Statute of West. 1. cap. 17.* in the end of the statute it appears, that the sheriff, upon such a return made to him by his bailiff, ought presently to enter into the franchise, and to make deliverance of the cattle: And so it appears the sheriff may do by the *Statute of Marlebridge, cap. 21.* If a plea of *withernam* be in the county by plaint before the sheriff, and the sheriff send unto the bailiff of the liberty to make deliverance, and the bailiff does nothing, that then the sheriff, *ex officio*, may enter into the liberty without any writ directed unto him in that case.

If the sheriff upon the *pluries* return, that the aforesaid B. took the cattle of the aforesaid A. and has driven them out of the county aforesaid into the county of T. wherefore he could not replevy them to the said A. &c.; or if the sheriff return, that he sent to the bailiff of the liberty of D. who has return of writs, &c. who gave him answer, that the cattle are eloigned into divers liberties, by reason whereof he cannot have a view of them, nor deliver the cattle; or if the sheriff return, that he himself cannot have a view of the cattle to deliver them; or if he return, that after the taking, &c. that the defendant



defendant has *eloigned* the cattle out of his bailiwick, that he cannot deliver them; or if he returns, that the defendant has *eloigned* them into unknown places, that he cannot have view of them to deliver them; or if the sheriff returns, that he sent unto the bailiff of the liberty, who answered him, that the defendant had impounded the cattle within the rectory of the church of C. for which cause he cannot deliver them, &c. On these returns made by the sheriff, the plaintiff shall have a writ of *withernam* to take as many of the defendant's cattle, directed unto the sheriff; and the writ shall be such:

GEORGE the third, To the sheriff, &c. WHEREAS we have oftentimes commanded you, that justly, &c. to A. his cattle, which B. &c. detains, as it is said, or should signify to us, the cause why you would not, or could not execute our command more than once directed to you thereupon; and you have signified to us, that after the aforesaid B. took the cattle of the aforesaid A. he drove the same through your county, and from the county aforesaid, into the county of C. wherefore you could not replevy them to the said A. WE being willing to oppose the malice of him the said B. in this matter, do command you, that without delay you take in *withernam* the cattle of the aforesaid B. in your bailiwick, and detain them until you can replevy to the said A. his cattle aforesaid, according to the custom of our realm; according to the tenor of our said commands heretofore directed to you, &c.

Note; In the writ of *withernam*, the cause which the sheriff returned on the *pluries*, &c. ought to be put and rehearsed in the writ of *withernam*, as before is said. If the sheriff returns upon the *pluries*, that he has sent unto the bailiff of the liberty, and that he answers him, that the beasts are *eloigned*, &c. then he shall have a *withernam* directed unto the sheriff, and the sheriff shall send his bailiff into the liberty to sue the *withernam*; and if the bailiff do not execution, nor give answer unto the sheriff, of the precept directed unto him, then the plaintiff shall have a *withernam*, directed to the sheriff, with *non omittas*; because of any liberty, &c. but enter the same, &c. and to take the cattle in *withernam*, &c.

It appears by the register, that if a man sue a *replevin* in the county, without writ, and the bailiff return unto the sheriff, that he cannot have view of the cattle to deliver them; then the sheriff, by inquest of office, ought to inquire thereof: And if it be found by the jury, that the cattle are *eloigned*, &c. then the sheriff in the county-court may award a *withernam* to take the defendant's cattle. And if the sheriff will not award a *withernam*, then the plaintiff shall have a writ out of the Chancery, directed unto the sheriff, rehearsing the whole matter, and commanding him to award a *withernam*, &c. And he may have an *alias*, and after a *pluries* and attachment against the sheriff, if he will not execute the King's command, &c.

A man shall have a *replevin* of divers cattle that are taken; as if a man take divers cows or sheep, and afterwards they have calves or lambs, the plaintiff shall have his *replevin* of them all, as well as of the cows and sheep which were taken.

The sheriff, on a complaint made unto him of taking of the cattle, may command his bailiff by word to replevy them; and the same is as well as if the sheriff had made his warrant to his bailiff to have replevied them; for it may be, that the sheriff or his bailiff cannot write, or that they may want such things wherewith they may write a warrant, &c.

The Lord shall have a *replevin*, if his *villain's* cattle are taken; and yet he had not property in them at the time of the taking; but now by his claim he has, &c. But it seems he shall not have damages for the taking of the cattle, but only for the detaining of them; if the same be found for him. *Stat. 9 Hen. 6. 26. 42 Ed. 3. 28. or 8.*

If a man takes cattle for *damage feasant*, and the other tenders amends, and he refuses it, &c. now if he sues a *replevin* for the cattle, he shall recover damages only for the detaining of them, and not for the taking of them; for that the same was lawful, and therefore no return shall be. *Stat. 22 Hen. 7. 30. Contra* in case of trespass.

If the Lord distrains his tenant's cattle wrongfully, and afterwards the cattle return back unto the tenant; yet the tenant shall have *replevin* against the Lord for those cattle, and shall recover damages for the wrongful distraining of them; because he cannot have an action of trespass against his Lord for that distress; but against a bailiff or servant he may. *1 H. 6. 7.*

If a man do distrain cattle in one county, and drive the cattle into another county, the party may sue a *replevin* in which of the counties he will, but not in both the counties. *Stat. 19 Hen. 6. 34, &c.*

If the cattle of a *feme sole* be taken, and afterwards she marries a husband, the husband alone may have a *replevin*. *Bro. Bar. & Fem. 85. contr.*

In a *replevin*, if the plaintiff does declare, that the defendant yet has and detains the cattle, and the defendant does appear, and afterwards makes default, the plaintiff shall have judgment to recover all in damages, as well the value of the cattle, as damages for the taking of them, and his costs. *M. 8 H. 8. Rot. 108. Lutw. 1150.*

*Writ of Pone to remove a Plea.*

**I**F a *replevin* be sued by writ out of *Chancery*, then if the plaintiff or defendant will remove that plaint out of the county into the *Common Pleas* or *King's Bench*, he ought to sue a writ out of *Chancery*, which is called a *pone*; the writ runs in these words:

GEORGE the third, &c. To the sheriff of L———. At the petition of the plaintiff, put before our Justices at *Westminster* such a day, the plea which is in your county by our writ between *A.* and *B.* of the cattle of him the said *A.* taken and unjustly detained, as it is said, and summon by good summoners the aforesaid *B.* that he be then there to answer the aforesaid *A.* thereupon; and have you there the summoners and this writ.

If the writ of *pone* shall be removed into the *King's Bench*, then the writ runs in these words.

GEORGE the third, &c. At the petition of the plaintiff, put before us, wheresoever we shall then be in *England*, the plea, &c.

This writ is sued for the plaintiff without putting any cause in the writ of the removal, &c.

If the defendant will remove the plea in the county on a *replevin* sued by writ, then he ought to put an evident cause in the writ after the *teste* of the writ, and the form of the writ runs in these words;

GEORGE the third, To the sheriff, &c. put before our Justices at *Westminster* such a day, the plea which is in your county by our writ, between *A.* and *B.* of the cattle of him the said *A.* taken and unjustly detained, as it is said, and tell the aforesaid *A.* that he may be there if he will, to prosecute his plea thereupon against the aforesaid *B.*; and have you there this writ and the other writ. *Witness*, &c. And because the aforesaid *B.* took the cattle aforesaid within his fee for customs and services due to him, as it is said, if the cause be true, and the aforesaid *B.* requires it, let execution of this writ be done, and otherwise not. And he may shew divers other causes; because the aforesaid *B.* and *C.* took the cattle aforesaid in the fee of him the said *B.* for customs, &c. let execution be done, &c. as above. Or thus: Because *A.* the clerk of *D.* sheriff of the county aforesaid, who frequently in the absence of the sheriff of the county holds the pleas of the same county, is the kinsman of the aforesaid *A.* for which the same sheriff favours him the said *A.* in the plea aforesaid, as it is said, let execution be done, &c. as above.



The party may shew any cause which induces any favour that the sheriff does or is like to do unto the plaintiff. As thus: because the aforesaid *B.* claims the aforesaid *A.* to be his villain, and for that reason asserts the cattle aforesaid to be his own, for which that plea ought not to be brought in the county, as it said, let execution be done, &c. as above,

If a *replevin* be sued by writ in any other Lord's court than in the King's court, then the plaint cannot be removed before the Justices by the plaintiff, nor by the defendant, without putting cause in the writ; and the writ runs in these words:

At the petition of the plaintiff, put the plea which is in your county by our writ between *R.* and the Abbot of *W*——— and *F.* of a certain horse of him the said *R.* taken and unjustly detained, as it is said; and summon by good summoners the aforesaid abbot and *I.* that they be then there to answer the aforesaid *R.* thereupon; and have you then there this writ and the other writ. *Witness, &c.* Because the aforesaid abbot is Lord of the court in *G*——— wherein that plea dependeth by return of our writ, by which the same *R.* cannot obtain justice in the plea aforesaid in the same court, against the aforesaid abbot and *I.* as it is said.

If the plea be removed at the suit of the plaintiff, then when he has shewed cause in the end of the writ, he shall say afterwards in the same writ, For which the same complainant cannot obtain justice in his plea aforesaid against the aforesaid *B.* in the same court, as it is said.

If the plea be removed at the suit of the defendant, then after cause shewn in the writ, it shall be said, For which the same bailiff favours him the said *A.* in his plea aforesaid, as it is said, let execution be done, &c.

### *The Writ of Recordari.*

**W**HEN the plaint is in the county-court, and the *replevin* is sued there without a writ; if the plaintiff or defendant will remove that plaint, he ought to sue a *writ of recordari* out of *Chancery*, directed unto the sheriff; and the writ runs in these words:

**G**EORGE the third, To the sheriff of *L*———, greeting. We command you, that in your full county you cause to be recorded the plaint which is in the same county without our writ, between *A.* and *B.* of the cattle of him the said *A.* taken and unjustly detained, as it is said, and have that record before our Justices at *Westminster*, such a day, &c. under your seal, and under the seals of four lawful Knights of the same county, of them who were present at the record; and prefix the same day to the parties, that they be then there

to proceed in that plea as it shall be just; and have you there the names of the aforesaid four Knights and this writ. *Witness, &c.* Let execution of this writ be done, if the aforesaid *A.* requires it, and otherwise not.

It appears that the plaintiff may remove the plaint by *writ of recordari*, without any cause put in the writ; but the defendant cannot remove the plaint by a *writ of recordari*, without shewing cause in the writ, as directed under the *writ of pone*. And the causes for the defendant ought to be such; Because the aforesaid *B.* in pleading affirms, that he himself took the cattle aforesaid in his separate soil, as in his damage there, in which soil indeed the aforesaid *A.* claims to have common of pasture, as it is said; which said plaint, for that it toucheth the freehold (as is aforesaid) in the same county, ought not, according to the law and custom of our kingdom, to be pleaded without writ. Let execution of this writ be done, if the cause be true, and the aforesaid *A.* requires this.

If a *replevin* be sued by plaint in the court of any other Lord than in the county-court before the sheriff, then the writ of *recordari* which is sued by the plaintiff or defendant, shall be directed unto the sheriff; and the writ is in these words;

GEORGE the third, To the sheriff of *L*——— greeting: We command you, that having taken with you four discreet and lawful Knights of your county, you go in your own person to the court of *W*——— of *C*———, and in that full court you cause to be recorded the plaint which is in the same court without our writ, between, &c. and have that record under your seal, and the seals of four lawful men of the same court who were present at that record, &c. and to the parties, &c. as above. Because the aforesaid *A.* is the bailiff of the aforesaid *W*——— of *C*——— of his court aforesaid, and holds the pleas of the same court, and ought not to be a judge in his own cause.

The writ of *recordari* may be in the following words, viz. *YOU go to our wapentake of H. or thus, To our hundred of I. or thus, To our tithing of L. and in that full wapentake; or thus, in that full hundred; or thus, in that full tithing, &c.* and he may shew other causes, as the case requires. And if the writ of *recordari* be returnable in the *Common Pleas*, and at the day of the return the sheriff return it *tarde*, now the party that sued that writ of *recordari* shall have a *sicut alias recordare* out of the *Common Pleas*, directed unto the sheriff, &c. Stat. 10 Ed. 3. 42.

If the plea be discontinued in the county court, yet the plaintiff or defendant may remove the plaint into the *Common Pleas*, or *King's Bench*,  
by

by writ of *recordari*, &c. and it shall be good, and he shall declare on the same; and the court shall hold plea on the same plaint; for if the plaint be continued in the *county-court*, and issue joined on it, yet nothing shall be removed but only the plaint; and in the *Common Pleas* the plaintiff may declare anew, &c. And in a writ of *recordari* to remove a record out of a court of *ancient demesne*, the writ shall use the words *plaint and process*, and not *record*, 39 H. 6. by all the justices; yet the form of the *register* in the record, as before is said, is, *and have that record*.

If a record be removed out of a court of record by a *recordare facias*, it comes in without warranty, and the court shall not hold plea thereof. But if a record comes into court without a warrant, the party may sue out a writ directed unto the justices, that they proceed on that record *quod coram vobis residet*. If the *recordare facias* bear date before the plaint were entered in the *county-court*, yet the record is well removed; because that both courts are courts of record. If the record be removed out of the court of any other lord by such writ, which bears date before the entry of the plaint, it is not good.

### The Writ of Recaption.

A Writ of *recaption* lies, where a man distrains for rent, or service, or other things, and afterwards, pending the plea, he who distrained does distrain again for the same rent or service, or other thing, the beasts of the party whom he had before distrained on; then he who is so distrained shall have this writ, and shall recover damages for the *second distress* so taken; and he who took the distress shall be fined for the wrong, although the *first distress* were lawfully taken, and although the rent or services for which he distrains were in arrear, &c. because by the *first distress* he shall have a return of the things taken, until he has the rent or services for which he distrained. But for *damage-feasant* in his lands, a man may distrain the beasts of any man which he finds on the land during the damage, so often as he shall find them so doing; because he distrains them every time for a new *trespass*, and new wrong done in his land.

If the Lord distrains for rent or services behind, and afterwards, pending the plea, the Lord does command his servant to distrain for the same rent or service, by reason whereof the servant or bailiff do distrain again; the tenant shall have a writ of *recaption* against the Lord for the same distress.

If the Lord distrains his tenant for rent or service, and afterwards the servant or bailiff does distrain the tenant again for the same rent



or service, and the Lord does agree unto that distress, by joining in aid-prayer of the servant or bailiff, the tenant shall have a *writ of recaption* against the Lord. If the Lord distrains for rent or service, and afterwards the Lord's bailiff does distrain the same tenant for the same rent or service pending the plea; the tenant shall not have a *writ of recaption* against the Lord, nor against the bailiff, although the bailiff makes *consuance* in the right of the Lord, &c. For it may be that the Lord had not notice of that distress, or that the bailiff had not notice of that distress which the Lord took before for the same rent or service.

In that case the tenant may have an *action of trespass* against the bailiff for the *second distress* of his cattle for the same rent or service for which the Lord had distrained before. 10 Ed. 3. pl. 13.

If the Lord does distrain for rent or services, and afterwards (pending the plea) the Lord does distrain the cattle of a stranger for the same rent, and not his cattle who was *first distrained*; he who is so distrained, shall not have a *writ of recaption*, nor he who was *first distrained*: for it is necessary for him who shall have this *writ of recaption*, that he have his cattle *first distrained* before for the same cause for which they were distrained the *second time*. 12 Ed. 2. p. 13.

If a man distrain two men's cattle for rent or service, and afterwards he does distrain the cattle of one of them again for the same rent or service; now he shall have a *writ of recaption* alone in his own name. 34 Ed. 2. p. 12.

If the Lord distrains the beasts of a stranger for rent or service, and afterwards (pending the plea) the Lord does distrain the beasts of the same stranger for the same rent or service, the stranger shall have a *writ of recaption* as well as the tenant, if the beasts were taken at two several times

If the *writ of replevin* be abated, then the *writ of recaption* shall abate, as it was judged in the time of King Ed. 1.

If the Lord does distrain for rent in arrear at a certain day, his tenant's cattle, and he sues a *writ of replevin*, &c. and the Lord avows for the rent, &c. and the tenant pleads *hors de son fee*; if the Lord (pending that plea) distrains for rent behind at another day after, the tenant shall have a *writ of recaption*, because the Lord's title shall be tried by the first plea. It is otherwise if the tenant in the *first replevin* pleads *riens arriere*, or levied by distress, then (pending that plea) the Lord may distrain for the rent behind at a day after, because that the *seignior* is there confessed, and the tenant shall not have a *writ of recaption*.

The tenant or he who is distrained, shall have a *writ of recaption* before any *avowry* made, and may *aver* he distrained for the same cause.

In a *writ of recaption*, the defendant shall not avow as he shall do in a *writ of replevin*, but shall justify the taking, &c. as he shall do in an *action of trespass*; for the plaintiff shall recover damages only in the *recaption* for the contempt that the defendant has done against the law, and not for the taking of the cattle, nor for the detaining them. And in a *writ of recaption* it is not material whether the *first distress* be of right or not.

If a plea be removed out of the *county-court* into the *Common Pleas* by *writ of pone* or *writ of recordari*, and afterwards the plaintiff be *non-suited* in the *Common Pleas*, before or after an *avowry* made, the Lord after this *non-suit* may distrain again for the same cause, and the tenant shall not have a *writ of recaption*, because there is not any plea depending; and yet the plaintiff may sue out a *writ of second deliverance* on the same record.

If the Lord distrains the cattle of the tenant and a stranger, which they have in *common*, for rent or service, and afterwards (pending the plea) the Lord does distrain the tenant's cattle only for the same cause; the tenant shall have a *writ of recaption* for those cattle. But if the Lord distrains the cattle of the tenant only for rent, &c. and afterwards (pending the plea) the Lord does distrain the cattle of the tenant and a stranger, which they hold in *common*, for the same cause; it appears that the tenant shall not have a *writ of recaption* for these cattle, for the interest of the stranger.

If the Lord distrains, and the tenant sue out a *writ of replevin*, which is removed into the *Common Pleas*, and the *consuance* is demanded by the bailiff of the freehold, and is granted, and afterwards the bailiff fail to do right unto the party; if he distrains again for the same cause, the tenant shall have a *writ of recaption*; because the Lord ought to remove the plea into the *Common Pleas* again, by *resummons*, &c.

A *writ of recaption* lies where the Lord distrains other cattle of the tenant than he first distrained, as well as if he had distrained the same cattle again, if it be for one and the same cause.

A *writ of recaption* lies as well where the Lord distrains the tenant again for the same cause, where the plea is depending in the *county-court* before the sheriff, as where the plea is depending before Justices of record.

If the plea be depending in the county before the sheriff, then the form of the writ of *recaption* is—

GEORGE the third, to the sheriff, &c. *A.* hath shewed to us, That whereas *G.* had replevied to the said *A.* without our writ, his cattle, which *B.* took and unjustly detained, and had given day until at your next county, and had attached the aforesaid *B.* to answer hereupon to the aforesaid *A.* he the said *B.* after that attachment, again took the cattle of the aforesaid *A.* upon the same occasion that he before took them, and detains them as before. And because this is unjust, and manifestly against our peace, we command you, that without delay, you cause the cattle of the aforesaid *A.* to be delivered, until the chief plea between them be determined. And if you shall find that the aforesaid *B.* again took the cattle of the aforesaid *A.* upon the same occasion that he before took them, and detains them as before, then have the body of the aforesaid *B.* before you and the keepers of the pleas of our crown, at your next county-court. And if by your next bailiffs, by whom the cattle of the aforesaid *A.* were replevied, and by other honest and lawful men of your county, he be convicted of a second taking for one and the same occasion, then so chastise him the said *B.* by *amercement*, that the chastisement may make others afraid of offending in the like case.

If the plaint be in the county-court by writ of *replevin* pending before the sheriff, then the writ is,

GEORGE the third, to the sheriff of S—— greeting. *A.* hath shewed unto us, that whereas he lately brought to you our writ of replevying to him his cattle, which *B.* took and unjustly detains, and you have replevied those cattle to him the said *A.* and given to him day, until at your next county, &c. as in the writ before.

If the plaint be removed out of the county-court by *recordare*, then the form of the writ of *recaption* is,

GEORGE the third, to the sheriff, &c. *A.* hath shewed unto us, that whereas *B.* had and unjustly detained the cattle of the aforesaid *A.* and you upon the complaint of him the said *A.* as the custom is, had replevied those cattle to the same *A.* and given to him day until at your next county, and had attached the aforesaid *B.* to answer upon this to the aforesaid *A.* and afterwards we commanded you, that you should have the record of the plaint aforesaid, before our Justices at *Westminster* such a day last past; the same *B.* pending the plea before the said Justices, hath again taken the cattle aforesaid, &c. as above.



If the plaint be removed out of the *county-court* by writ of *pone* into the *Common Pleas*, then the writ of *recaption* is—

GEORGE the third, to the sheriff, &c. *A.* hath shewed unto us, That whereas he had lately brought to you our writ of replevyng to him his cattle which *B.* took and unjustly detains, and you had replevied those cattle to the same *A.* and given him day until at your next county, and you had attached the aforesaid *B.* to answer upon this to the aforesaid *A.* and afterwards we commanded that plaint to be put before our Justices at *Westminster* such a day last past; the same *B.* pending the plea before the same Justices, again took the cattle of the aforesaid *A.* upon the same occasion which he before took them, and detains them as before, and doth not permit justice to be done, in contempt of our commands. And because this is unjust, and manifestly against our peace, we command you, that if the aforesaid *A.* shall make you secure touching the prosecuting his claim, &c. then put by gages, &c. the aforesaid *B.* that he be before our Justices aforesaid, to answer to us concerning the contempt aforesaid, and to the aforesaid *A.* of the trespass aforesaid; and have you there the names of the pledges and this writ, and cause those cattle to be replevied to the same *A.* Witness, &c.

If a man sue a replevin by writ, and the sheriff sends unto the bailiff of the liberty to replevy the cattle, because that the taking was within the liberty, and afterwards the plaint is removed by writ of *pone* into the *Common Pleas*, and afterwards the lord, or the party who distrained before, distrains again for the same cause; then he who is so distrained on shall have a writ of *recaption*, and the writ shall be in these words—

GEORGE the third, to the sheriff, &c. *S.* hath shewed unto us, that whereas he lately brought to you our writ of replevyng to him his certain horse, which *I.* and *A.* have taken and unjustly detained, and the bailiffs of the liberty of the Abbot of *R.* of ~~C.~~ (whom you have made to have the return of our writ aforesaid) replevied that horse to the same *S.* and attached the aforesaid *A.* and *I.* to answer hereupon the aforesaid *S.*; and afterwards we commanded that plaint to be put before our Justices at *Westminster* such a day, in the third year of our reign, the aforesaid *I.* and *A.* have again taken the cattle of the aforesaid *S.* pending the plea aforesaid before the bailiffs of the aforesaid Abbot, of his court aforesaid, before whom that plaint, according to the liberties granted to the same Abbot by the same Justices, is returned to be pleaded, &c. as above.

If a Lord has a *hundred* or a *wapentake* and has the power to hold plea of *unlawful distress*, &c. and a man distrains another there, for which he sues a writ of *replevin* within the *hundred*, and pending the plea there, the party who distrained before distrains the same man again for the same cause; then he who is so distrained on shall have a writ of *recaption*, in the following form, directed unto the sheriff.

GEORGE the third, To the sheriff, &c. *A.* hath shewed unto us, that whereas *B.* had taken and unjustly detained the cattle of the aforesaid *A.* and the bailiffs of *M*— of *N*— upon the complaint of the said *A.* (as the custom is) had replevied those cattle to the same *A.* and given to him day until at the next *wapentake* of their aforesaid lord of *N*—, and had attached the aforesaid *B.* to answer to the aforesaid *A.* upon this; and afterwards we command you, that having taken with you, &c. you shall go to the aforesaid *wapentake*, and in full *wapentake*, &c. without our writ between him the said *A.* and the aforesaid *B.* of the aforesaid cattle of him the said *A.* taken, &c. and that record, &c. the same *B.* pending the plea, &c. on the same occasion on which they were first taken, &c. put, &c. as before in the writ of *recaption*.

It appears by these writs of *recaption*, that if a man be distrained, and he sue out a writ of *replevin* by plaint before the sheriff in the county-court, and afterwards pending that plaint he is distrained on again for the same cause, then he shall have a writ of *recaption*, which shall be directed to the sheriff, and the sheriff shall hold plea on that writ of *recaption*.

If a man be distrained within any liberty, and he sues out a writ of *replevin* there, by plaint or by writ, and pending that plaint in the liberty, he be distrained again for the same cause by the person who distrained before, he shall not have upon that distress a writ of *recaption*; because the plaint is not pending before the sheriff, nor before the Justices, and the King will not direct the writ of *recaption* but unto the sheriff.

If the plaint were removed by writ of *pone* or *recordare* out of the liberty before the Justices, then the party who was distrained on shall have a writ of *recaption*, as well for the distress which was before the writ of *pone* or *recordare*, as if the retaking had been after the writ of *pone* or *recordare* sued forth.

If a man be convicted before the sheriff in a writ of *recaption*, &c. he shall be *amerced*, and render damages unto the party for the contempt. But if he be convicted before the Justices in a writ of *recaption*, he shall be *fined*, and not *amerced*; and shall render damages unto the party for the contempt.

*The Writ of Withernam.*

**T**HIS writ lies where a man takes the cattle or goods of another man, and the party sues out a writ of *replevin* by writ, and an *alias* and *pluries*, and on the *pluries* the sheriff does return, That the cattle or goods, &c. are *eloigned*, &c. by reason whereof he could not replevy them, &c. then the writ of *withernam* shall issue out of that court where the *pluries* is returned, returnable in the *King's Bench* or *Common Pleas*. The form of which writ is as follows :

GEORGE the third, To the sheriff of *Lincolnshire*, greeting. Whereas we have many times commanded you, that justly, &c. to *A.* his cattle, which *B.* &c. or signify the cause, &c. wherefore you would not or could not execute our command many times directed to you thereupon ; and you have signified to us, that after the aforesaid *B.* took the cattle of the aforesaid *A.* he drove them in your county, and from the county aforesaid into the county of *B.*—, wherefore you could not replevy them to the same *A.* We being willing to oppose the malice of him the said *B.* in this behalf, command you, that you take the cattle of the aforesaid *B.* in your bailiwick in *withernam*, and detain them until you can replevy to the same *A.* his cattle aforesaid, according to the law and custom of our kingdom, according to the tenor of our commands aforesaid before to you, &c.

In the writ of *withernam* the party ought to rehearse the cause which the sheriff returns, for which he cannot replevy them ; as to say,

And after the aforesaid *B.* took those cattle or beasts, he *eloigned* those cattle or beasts, or that ox or horse, out of your bailiwick, so that you could make no delivery thereof to the same *A.* as you have signified to us ; We, &c. command you, that without delay you take cattle or beasts, &c. as the case is, in your bailiwick, to the value of the cattle, &c. of the aforesaid *A.* in *withernam*, and detain them until you can replevy to the same *A.* &c.

*Note.* There are many causes that the sheriff may return on the *pluries*, wherefore he cannot replevy them.

If the sheriff do return on the *pluries repleg'*, that he has sent unto the bailiff of the liberty who has return of writs, &c. and that the bailiff has given answer, that he cannot execute the writ, because he cannot have a view of the cattle or goods which were taken ; then the court in which such return is made, shall award a writ of *withernam* unto the sheriff, and the sheriff shall thereupon



thereupon make his precept unto the bailiff of the liberty; and if the bailiff of the liberty does not make a return thereof unto the sheriff, then the sheriff shall return the whole matter in court, and thereupon the court shall award a writ of *withernam* and a *non omittas* with the same. The form of the writ is as follows:

GEORGE the third, to the sheriff of B——— greeting. Whereas we have many times commanded you, &c. (until) or could not execute our command many times directed to you thereupon; and R. of C——— bailiff of the liberty of St. Walric, whom you have made to have the return of our writ, hath answered you, that he could not do execution of that writ, because he could not have a view of the cattle aforesaid, as you have signified to us; wherefore we commanded you, that without delay you should take the cattle of the aforesaid B. in your bailiwick in *withernam*, and detain them until you could replevy to the same A. his cattle, &c. according to the tenor of our commands, &c. thereupon to you directed, or should signify to us the cause, &c. why you could not, &c. And you have returned to us, that the same R. bailiff of the liberty aforesaid, whom you have made to have the return, &c. has given you no answer thereupon. We command you, that you do not omit because of the liberty aforesaid, but that you enter into it and take, &c. in *withernam*, until, &c. according to, &c. before to you, &c. Witnels, &c.

If a man distrains any man's cattle, and he sues out a writ of *replevin* by plaint unto the sheriff, for which the sheriff makes a precept unto the bailiff to replevy them, and the bailiff returns at the next *county-court*, that he cannot replevy the cattle, because they are *eloigned*, or that he cannot have a view of the cattle; then the sheriff in the same *county-court* ought to make an enquiry if it be true which is returned, and if it be found so by the jury, then the sheriff *ex officio*, shall make a precept unto his bailiff, in the nature of a writ of *withernam*, to take as many cattle of the other party. And if the sheriff make such precept to take the other's cattle in *withernam*, and the bailiff will not execute the writ, then the party may have a special writ out of the *Chancery* directed unto the sheriff, commanding him to do *withernam*, and to do execution of the first judgment. It is in the following words:

GEORGE the third, to the sheriff, &c. A. hath shewed unto us, that B. and C. had unjustly taken and detained the cattle of the aforesaid A. and the same A. prosecuted before you for replevying to him the cattle aforesaid, according to the law and custom of our kingdom; and although it was testified by I. your bailiff, whom you sent to replevy the cattle aforesaid of the said A.; and found by an inquisition

inquisition made in your full county (as the custom is) that the same bailiff could not have a view of the same cattle to replevy them to the aforesaid *A.* wherefore it was considered in your full county, that the cattle of the aforesaid *B.* and *C.* in your bailiwick, should be taken in *withernam*, and detained until his cattle aforesaid could be replevied to him the said *A.* according to the law and custom of our kingdom; yet the same *A.* hath not yet obtained execution of the consideration aforesaid, to the no little damage and grievance of him the said *A.* and because we are willing to relieve the aforesaid *A.* in this matter, we command you, if it be so, that you take the cattle of the aforesaid *B.* and *C.* in *withernam*, and detain them until you can replevy to the same *A.* his cattle aforesaid, according to the law and custom of our kingdom of *England*, and according to the consideration aforesaid, &c.

It appears, that the sheriff may award *withernam*, or a writ of *replevin* sued by plaint, if it be found by inquest in the county-court, that the cattle are *eloigned* according to the bailiff's return, &c. But on the *withernam* awarded in the county-court, if the bailiff does return, that the other party has not any thing, &c. he shall have an *alias* and a *pluries*, and so *infinite*, and has no other remedy there.

On a writ of *withernam* returned in the *King's Bench* or *Common Pleas*, if the sheriff does return, that the party has not any thing, &c. there, a *capias* shall be awarded against him, and *exigent*, and *process* of *outlawry*.

In a writ of *replevin* sued by writ, at the *pluries* returnable, the sheriff doth return, *quod averia elongata sunt*, &c. Now if the defendant appears, the plaintiff shall not have a writ of *withernam*; because the defendant may give deliverance. And if the defendant's cattle be taken in *withernam*, they shall not be delivered to the plaintiff, but the sheriff shall keep them *quousque*, &c. and the same appears by the tenor of the writ. But it is said, that it is the usage in the *King's Bench*, that they shall be delivered unto the plaintiff, by which it seems, that the form of the writ of *withernam* there, is in another manner than as settled in the *register*.

In a writ of *replevin* at the *pluries* returnable, the sheriff does return, *quod averia elongata sunt*, &c. and the defendant does appear, and pleads, that he did not distrain them; the plaintiff shall not have a writ of *withernam*. And so if the defendant at the *pluries* returned appears, and pleads that the cattle are dead, in the default of the plaintiff, the plaintiff shall not have a writ of *withernam*.

The defendant in some cases shall have a writ of *withernam* against the plaintiff; for example, if the defendant has a return awarded for him,

him, and he sues out a writ *de retorno habendo*, and the sheriff returns on the *pluries*, *quod averia elongata sunt*, &c. he shall have *seire facias* against the pledges, &c. according to the statute of *Westm. 2.* and if they have nothing, then he shall have a writ of *withernam* against the plaintiff of the plaintiff's cattle.

### The Writ de Parco Fracto.

A Writ of *parco fracto* lies, where a man distrains cattle for *damage feasant*, or for rent or service, and puts them into the common pound, or into another pound or place, which shall be said to be a lawful pound; and he who has property in the cattle, or another person, takes the cattle out of the said pound, and drives them where he pleases; he who distrains him for, &c. shall have the writ *de parco fracto*.

If a man sends his servant to distrain for rent or services, and the servant distrains the cattle, and unpounds them, and a stranger takes them out of the pound, the master shall have the writ *de parco fracto*, and not the servant, for it is the master's pound.

If a man distrains for rent or services, or *damage feasant*, and puts the cattle into the land or close of a friend with his licence, and he who owns the cattle, takes them out of the said close, he who distrains them shall have the writ *de parco fracto*, and not he whose close it is; for he who owns the close, ought to have an action of *quare clausum fregit*, &c. for that it is not his pound, but the pound of him who distrains the cattle. And the form of the writ *de parco fracto*, is as follows:

GEORGE the third, to the sheriff of *Lincolnshire* greeting. If *A.* &c. then put, &c. *B.* to shew wherefore, Whereas the said *A.* took certain beasts in his damage at *N.* (or thus, the beasts of the aforesaid *B.*) and impounded them there, according to the law and custom of our realm, the aforesaid *B.* with force and arms, broke that pound, and took and led away the beasts aforesaid, and other wrongs to him did, to the great damage, &c.

Note. This writ is *vi et armis*, and he shall not shew in the writ what kind of cattle they are, nor to whom the property of the cattle does appertain; if that he please not so to do.

If a man send his servant for to distrain for rent or services, or for *damage feasant*, then the form of this writ is as follows:



— T O shew wherefore, Whereas the said *A.* caused a certain ox (or certain beasts) to be taken in his damage at *N*— by *B.* his servant, and the said *B.* there impounded the said ox (or thus, those beasts) according to the law and custom of our realm of *England*, he the said *C.* with force and arms, broke that pound, &c.

Or thus, for an Abbot :

T O shew wherefore, whereas the said Abbot in his house in the suburbs of *Lincoln*, by friar *J.* keeper of our cell of *St. Mary Magdalen* without *Lincoln*, certain beasts, &c. Otherwise, for a default in the lord's court : wherefore, Whereas the said *A.* in his fee at *N.* caused to be taken by his servant, the beasts of the aforesaid *B.* for a certain default which the same *B.* made in the court of him the said *A.* against *E.* in a plaint which was in the same court, between, &c. by consideration of the said court, and the said *A.* impounded those beasts according to, &c. the aforesaid *B.* with force and arms, &c.

If a man does distrain for an *amercement* in a *hundred*, and impounds the cattle, and the other takes them out, the writ shall be in the following form :

WHEREFORE, whereas the said *A.* by *B.* and *C.* his bailiff's of the *hundred* of *N.* caused to be taken certain labouring beasts of him the said *T.* at *S*— within the precinct of the *hundred* aforesaid, for a certain *amercement*, in which the said *F.* was amerced in the same *hundred*, to be levied to the use of the said *A.* and the said *B.* and *C.* impounded those beasts, &c.

In this writ the party ought to shew, that the property of the cattle were in him who was amerced, because he cannot distrain the cattle of other men for this *amercement* ; but for rent or service it is otherwise. For the party may distrain the cattle there, *levant and couchant* on the lands.

If the King do distrain for a *debt* or *amercement* due unto him, and impound the cattle, and a stranger does break the pound, and takes them out, then he shall have a writ, and the writ shall be in these words :

The King to the sheriff of *S*— greeting. Put by gages, &c. *P.* of *E*— and *C.* of *D*— that they be, &c. to answer as well to us, as to *Ann* Queen of *England*, wherefore, whereas *W.* or *R.* bailiff of the liberty of the said Queen of the *hundred* of *C*— (in which the said Queen, as in the rest of her lands and tenements, granted to her by us, hath the return of all our writs, as belongs to the said *W.* by reason of his office) by vir-

due of the return of a certain writ made by him for you within the liberty aforesaid, for a certain debt, to be levied to the use of the said Queen, upon the said *P.* by summons of our *Exchequer*, took the beasts of the said *P.* at *B.* and impounded them there, according to the law and custom of our realm; the aforesaid *P.* and *C.* with force and arms broke that pound, and took and led away the aforesaid beasts, and committed other wrongs there, in contempt of us, and to the great damage of the said Queen, and against our peace, &c.

When the King sues any writ, the writ shall not say, &c. *Si Georgius Rex Mag' fecerit te secur' &c.* for he shall not find sureties as a common person shall do, for he shall not be amerced, as appears by the writ before.

If the husband does distrain for rent or services which he has in right of his wife, and a stranger takes them out of the pound, the husband shall have the writ *de parco fracto* in her name, but yet it seems he may sue the same in his own name, and in the name of his wife, and join the wife with him.

### The Writ of Rescous.

**T**HE writ of *rescous* lies where a man does distrain for rent or services, or for *damage-feasant*, or would impeach or impound the cattle, and the other party does rescue them, or takes them from him, then he shall have this writ of *rescous*; and the writ is such:

GEORGE the third, to the sheriff, &c. IF *A.* shall make you secure, &c. then put, &c. to shew wherefore, whereas he the said *A.* took in his fee at *S*———, certain beasts; or thus, certain beasts of the said *B.* and would have impounded them there according to the law and custom of our realm of *England*, but the aforesaid *B.* with force and arms rescued the beasts aforesaid, and other wrongs, &c. Or thus; wherefore, whereas the said *A.* caused to be taken certain beasts by *C.* his servant, in his fee at *S*———, for customs and services due to him; or thus, caused to be taken a certain cart of him the said *B.* and he the said *C.* would have carried that cart unto the manor of the said *A.* of *S*———, according to, &c. the said *B.* with force and arms, made an assault upon him the said *C.* and the said cart took away from him, &c.

*Note.* It appears he may join in a writ of *rescous* for the assault and attery of his servant.

If he does distrain cattle, and other dead chattels, then the writ must be as follows :

TO shew wherefore, whereas he the said *A.* took the beasts and chattels of the aforesaid *B.* in his fee at *S*———, for customs and services due to him, and would have impounded those beasts, and detained the chattels aforesaid in the name of a distress, according to the law and custom of our realm of *England*, the said *C.* rescued those beasts, and took away from him the said *A.* the chattels aforesaid, and other wrongs, &c.

If he does distrain for a rent-charge, the writ is in these words :

WHEREFORE, whereas he the said *A.* in a certain tenement of him the said *B.* at *N*———, bound for a certain yearly rent, by the writing of him the said *B.* charged with the distress of the said *A.* took certain chattels of the said *B.* for the rent aforesaid, being in arrear, and would have there detained them in the name of a distress, according to the law, &c. the aforesaid *B.* took away from him the chattels aforesaid, &c.

*Note.* If a man sends his servant to distrain for rent or service, or *damage-feasant*, and *rescous* be made on the servant, the master shall have the writ of *rescous*, and not the servant ; for the wrong is done unto him who ought to have the rent or service, or is damaged, &c.

If a collector or sub-collector distrains for *fifteens*, and *rescous* be made, he shall have the writ of *rescous* ; and the writ shall be as follows :

IF *W.* of *S*——— the sub-collector of the *tenths* of the town of *S*——— last granted to us by the citizens and burgesses of our realm, &c. shall make you secure, &c. then put *B.* &c. to answer as well to us as the aforesaid *W.* wherefore, whereas the same *W.* took certain chattels of him the said *B.* for a certain sum of money assessed upon account of the *tenths* aforesaid, and in our name would have detained those chattels, in the name of a distress, the aforesaid *B.* there assaulted the said *W.* and beat him, and took away from him those chattels, &c. and other wrongs, &c. in contempt and prejudice of us, and to the great damage of the said *W.* and against our peace, &c.

If the bailiff or officers do arrest certain persons, and others rescue them from the officers, then he who caused them to be arrested, shall have the writ of *rescous* ; and the writ shall be to the effect following :

WHERE.



WHEREFORE, whereas the said prior by the charter of Lord Edward, &c. which we have inspected, ought to have at *W*— his free court of all his men, as well burgessees as others, and of all pleas and plaints and attachments whatsoever happening; together with prizes and all other things belonging to his men, and the same prior, caused to be attached by *B.* his bailiff at *F*— *R*—, and *M*— the men of him the said prior, for divers trespasses by them done at *T*— within the liberty of the aforesaid prior (as it is said) against our peace, whereupon hue and cry was there levied; and the said prior would, according to law and custom, have there detained them the said *R.* and *M.* to undergo justice in this behalf in the court of the said prior, the aforesaid *B.* and *L.* with force and arms took the aforesaid *R.* and *M.* not justified concerning the said trespasses, out of the custody of him the said *B.* and permitted them to go where they would, and other wrongs, &c. to the great damage of him the said prior, and to the manifest hurt of his liberty, and against our peace, &c.

*Note.* If the bailiff or sheriff, or other officer of the King, does arrest a man, or distrain him for debt, or other service due to the King, and *rescous* is made, then the bailiff or other officer shall have the writ of *rescous* in his own name, and not the King's; and the writ shall be as follows:

If *T.* bailiff of the hundred of *F*— shall make you secure, &c. then put, &c. to answer as well to us as the aforesaid bailiff, wherefore, whereas the same bailiff, according to the duty of his office, took *W.* (whom we commanded to be taken by our sheriff of the county aforesaid, by our writ of judgment to him directed) at *K*— by virtue of our mandate aforesaid, and would have led him unto our castle of *R*—, there to remain in our prison, the aforesaid *R.* and *S.* with force and arms rescued him the said *W.* at the town of *K*—, and other wrongs, &c. in contempt of us, and to the great damage of the aforesaid bailiff, and against our peace: and have, &c.

If the bailiff would arrest any person, and he himself does rescue himself, and will not obey the arrest, then the writ shall be,

IF *H.* of *R*— bailiff of our town of *S*—, shall make you secure, &c. then put *B.* &c. wherefore, whereas he the said *H.* according to the duty of his office, attached the aforesaid *B.* for a certain hue and cry levied upon him by *W.* of *S*— at *C*— on the complaint of the aforesaid *W.* according to the law and custom of our realm; the aforesaid *B.* not permitting himself to be  
 † F f 2 † justified,

justiced, with force and arms broke the attachment aforesaid, and there made an assault upon him the said *H. &c.*

If the sheriff sends unto the bailiff of the liberty to levy *finis* and *amercements* for the King, and the bailiff distrains certain cattle, and the *rescous* is made, the lord of the liberty shall have a writ of *rescous* of the *rescous* done to the bailiff, and for the battery and assault made upon him, and for the loss of his service, and the whole charge shall be contained in one writ.

If the King's bailiff does distrain for rent, and *rescous* is made, the bailiff shall have the writ of *rescous* and not the King.

If a man sue forth an execution, and has a *capias* directed to the sheriff to arrest the party, and the sheriff make his warrant to the bailiff of the King's liberty where the party dwells, to arrest him, by which the bailiff does arrest him, and others do rescue him from the bailiff, he who sued forth the writ of *execution* shall have the writ of *rescous* against him that rescued him, as appears by the *register*; but yet it seems reasonable that the bailiff shall have a writ of *rescous* in such case; for some say the bailiff shall be chargeable to him who sued forth the *capias*, &c. and for the arrest.

It further appears by the *register*, that if a writ be directed unto the sheriff to levy the expences of the Knights at the parliament, and the sheriff make his warrant unto the bailiff of the liberty of the bishop of *Ely* to levy the sum assessed, &c. for which the bailiff by his under-bailiff, does take certain cattle and would impound them, and other persons do rescue the cattle and beat the under-bailiff, that the bailiff shall have the writ of *rescous* against them; for it seems that the Knights which should have the money, shall not have a writ of *rescous* for the same *rescous*, because it is not a duty unto them by any person certain, but to be levied of the inhabitants of the towns.

If the lord does distrain his tenant's cattle, and a stranger's cattle for rent or service behind, when there is not any rent or service behind, the stranger may rescue his own cattle, but not the tenant's, as it appears. And by the statute of *Marlbridge*, cap. 3. which willesh, *non ideo punitur Dominus per redemptionem*, yet the opinion of *Tborpe*, M. 31 Ed. 3. is contrary; for he says, the stranger may rescue as well the tenant's cattle as his own.

The writ of *rescous* is not to be brought by the person who has the possession of the cattle, or the thing of which the *rescous* is supposed to be made: for if a man come to arrest a man, or to distrain,

and he is disturbed to do the same, he shall not have a writ of *rescous*, but an *action on the case*.

The King shall not have the writ for a *rescous* done to his officer, *Vide P. 20 Ed. 3.* but he may cause him to be indicted for the same.

*The Writ Pro Exoneracione Sectæ ad Curiam Com' vel Baron.*

**T**HIS writ lies where the tenant holds his land to do suit at the county-court, hundred or other court-baron, or wapentake or leet, and he who ought to do the suit is in ward unto the King, or his committee, and the lord of whom he holds by such service will distrain him to do his suit at his court during the time he is in ward unto the King or his committee; his guardian shall sue this writ unto the sheriff, or bailiffs of the court, that they do not distrain him, &c. to do suit during the time he is in ward to the King or his committee; and the form of the writ is in the following words:

TO the bailiff of *A* ——— of *I* ——— greeting. Whereas according to the law, &c. we who ought not to do suit at the court of any person by reason of any lands and tenements whatsoever, being in our hand or in our ward, and those persons to whom we have committed such wardship, ought to hold those wardships during the custody as freely and quietly from all suit, as if we kept them in our own hand; we command you, that by reason of the lands and tenements of *I.* deceased, which be held of us in chief, and which are in the custody of him the said *R.* of our grant, you do not distrain, or cause him to be distrained to do suit at the said court of our lord *I.* during the custody aforesaid, and the distress, if any, &c.

This writ may be had by a tenant in dower, where she is endowed in the *Chancery* of lands which are in ward to the King, which lands are held of other lords; if such lords will distrain the tenant in dower to do suit for those lands which she holds in dower, she shall have a writ to discharge her; which writ shall run as follows:

**GEORGE** the third, to the bailiffs of *A* ——— and *B* ——— greeting: Whereas according to the law, &c. (as above, until) or in our ward, and women holding lands or tenements in dower of such wardships, ought to hold them as freely and quit from all suit during those wardships, as if we kept the said lands and tenements in our own hand; we command you, that you do not distrain *M.* and *R.* his wife, by reason of the lands and tenements which were *H.*'s in



*H's* in *F*———; which he held of us in chief, and which the said *R.* and *M.* hold in dower of him the said *R.* of the gift of the aforesaid *H.* her former husband, and of the inheritance of the son and heir of *A.* within age being in our wardship, to do suit at the court aforesaid of our lord, during our wardship aforesaid; and the distress, &c.

If the heir be in ward of the King, and also his lands, and afterwards the tenants *paravail*, who hold of the heir are distrained by other lords, of whom the heir holds his lands, to do suit unto the lord's court, those tenants shall have a writ directed unto the lord's bailiff, to discharge them of the suit; and the writ is in manner following :

GEORGE the third, to the sheriff of *Nottinghamshire*, greeting. Whereas according to the law and custom of our realm, no person who holds of heirs being within age and in our custody, is bound to do suit at the *county, hundred, wapentake*, or other court, for lands and tenements of those heirs being in our hand, during the custody aforesaid; we command you, that you distrain not, or cause to be distrained, the tenant's of the abbey of *Derley*, of certain lands and tenements of *R.* the son and heir of *R. B.* deceased, in *C*———, (which he held in chief of lord *R.* late King of *England*, because the lands and tenements of the same heir in the said town, are in our hand by reason of his minority) to do suit at the *wapentaks* of *B*——— during the custody aforesaid.

If the heir and his lands be in the King's ward, for lands held of the King in *capite*, and afterwards the other lords, of whom the heir holds parcel of his lands, will distrain for any service or rent to them due, then the King or his committee may sue a writ for them to *surcease* from such distress; and the writ is such :

GEORGE the third, to the bailiffs, &c. Whereas heirs being within age, and in our ward, ought not, nor are bound to do any services during those wardships, according to the law and custom of our realm; we command you, that the distress which is made by the abbot of *W*——— upon the tenant of the heir of *W.* of *W*——— (who held of us in chief) being within age and in our custody, for homage, fealty and other services to be done by the said heir to the said lord, you do wholly supersede during the custody aforesaid, and the distress if any, &c.

The tenant in dower shall have such writ, if the other lords will distrain her, for the relief of the heir or other services, during the time that the heir's lands are in the King's custody, or in the custody

of his committee. And he may sue this writ directed unto the lord himself, as well as to the bailiff, or unto them both.

*Note.* That if a man holds of another to do suit to his mill, &c. if he do not the suit, he shall have a writ of *sesta ad molendinum* against him, and by the same reason, if a man holds of another lord to do suit at his court in the manor of D——— if he does not the suit, the lord may have a writ of *sesto ad curiam suam faciend* as well as the other writ. But yet there is no such writ in the register, because he may distrain for that suit, and shall not have any other profit, but only appearance in his court. But in the other case of the writ of *sesta ad molendinum*, he shall have other profits by the suit, the toll of the grain he shall grind there, and for that profit it appears the action *sesta ad molendinum* was given, and for the suit of the court by only a distress.

If the King have lands by forfeiture of *escheat*, and leases them for life, at will or in tail, and if the lord of the lands of which they are held will distrain the King's committee or lessee for suit or other services, he shall have a special writ unto the lord's bailiff to *surcease*, &c.

If lands descend unto divers *coparceners*, for which one suit shall be done at the lord's court, if parcel of those lands come into the King's hands, then he shall have a special writ to discharge him of the suit for the time they shall be in the King's hands; which shall be in these words:

GEORGE the third, to the sheriff, &c. greeting. Whereas it is provided by the common council of our realm, that if any inheritance from which only one suit is due to several heirs, &c. or devolves to others by *sale*, &c. has been accustomed to be done, and a certain inheritance (which was H.'s of B——— of the barony of B———, from which said barony only one suit is due to your said court) is devolved by sale, as we understand, to our beloved and faithful W. of H. and I. son and heir of R. of S———, being within age, and in the custody of our beloved and faithful R. of N———, by our commission. And we, according to the law and custom, &c. ought not to do any suit by reason of lands and tenements being in our hand and in our ward, and those to whom we have committed such wardships, ought to hold them as freely, and quit from all suit, as if we kept the same in our own hand; we command you, if it be so, that then you do not distrain the said W. of H——— to do suit at your county aforesaid for the lands and tenements of the said barony, during the wardships of the said heir above-mentioned, &c.

If

If the wife be tenant in dower of any land, she shall not be distrained to do suit for that land which she holds in dower, if the heir have sufficient land in the same county to be distrained for the same. And if she be distrained, then she shall have the following writ:

GEORGE the third, to the bailiff of the hundred of N——, greeting, &c. Whereas according to the law and custom of our realm, women, tenants in dower, ought not to do suit at the hundred or the court of any person, for their lands and tenements which they hold in dower; we command you, that you do not distrain A. who was the wife of B. to do suit at the hundred aforesaid, for the lands and tenements which she holds in dower, and the free tenement which was her said former husband's, contrary to the law and custom of our realm, so long as the heir of the aforesaid B. has other lands and tenements in your bailiwick, whereby he may be distrained to do the suit for the dower aforesaid, and the distress, if any, shall be made, &c. that you cause it to be delivered without delay, &c.

If lands descend to many *coparceners*, whereof one suit ought to be done for the whole land; now if the land be held of the King, then all the *coparceners* ought to do the suit as well after partition as before. But if the land be held of another lord, then that *coparcener* of his *feoffee*, who has the part of the eldest sister, shall only do the suit; and if the lord will distrain the other *coparceners*, then they shall have a writ against him, directed to him or his bailiffs, to discharge them of that suit, and distress taken, &c. and the writ shall be in these words:

GEORGE the third, to C. or to the bailiffs of C. greeting, &c. Whereas by the common council, &c. it is provided, that if any inheritance, from whence one suit only is owed, devolves to several heirs, *coparceners* of the same inheritance, or otherwise by sale or other manner, only one suit is to be done for that inheritance, as before has been accustomed to be done, and a certain inheritance which was A.'s in N—— (for which one suit only was due to your court of I——, or to the court aforesaid of your lord of I——) is devolved to A. B. and C. coheirs and *parceners* of the inheritance aforesaid, as we have received information: we command you (or ye) that you (or ye) do not distrain the aforesaid A. B. and C. severally to do divers suits for their portions of the said inheritance at your court of I——, or at the court aforesaid of your lord of I—— contrary to the form of the provision aforesaid, and the distress, if any, &c.

If the tenant in *feoff* divers persons of lands, for which one suit ought to be done, if one of the *feoffees* do the suit, &c. if the other *feoffees*



feoffees are distrained to do suit for that land, they shall have such writ, which writ is in the register, and that writ is given by the statute of *Marlebridge, cap. 9.*

If the heirs or feoffees shall do the suit at the *county-court, hundred, or wapentake*, if one do the suit, all of them are discharged; and if they be distrained, they shall have that writ.

If one *coparcener* makes a feoffment of his part, or a man be tenant by the curtesy of one part of the land, yet one suit shall be only done by one *coparcener*, by him who has the eldest part. And if they be joint feoffees, then they by one of them, as they can agree amongst themselves, &c. And if he sue such writ, and be distrained, then he shall have an attachment against the lord, or the bailiffs to whom the first was directed, to answer to that contempt, on which writ he shall recover his damages, &c.

If there be two *coparceners* of land for which one suit ought to be done, and the eldest sister will not do the suit at the lord's court, then the lord may distrain the other *coparcener* as well as the eldest *coparcener*, for that suit, and if the *coparceners* be distrained, then they shall have a writ against the eldest sister, to compel her to do the suit. And the writ shall run in these words:

GEORGE the third, to the sheriff, &c. If *B.* and *C.* shall make you secure, &c. then summon, &c. *A.* that she be, &c. to shew wherefore, whereas by the common counsel, &c. that if any inheritance, &c. (as above until) has been accustomed to be done, and that she who has the principal part, &c. and a certain inheritance, &c. (as above until) is devolved to *A. B.* and *C.* coheirs and *parceners* of the inheritance aforesaid, as we have received information, and the aforesaid *A.* has part of that inheritance; and the aforesaid *B.* and *C.* are ready to contribute to do the suit for their portions, she the said *A.* refuses to do that suit for herself and the said *B.* and *C.* at the court aforesaid, to the great damage of them the said *B.* and *C.* and against the form of the provision aforesaid, as it is said. And have there the summoners, &c.

If a man has lands in divers places in the county, and has several leets, &c. or hundreds, and he is constrained to come unto the leet or the sheriff's torn, where he is not dwelling or conversant, but is dwelling within the precinct of any other leet or hundred, &c. then he shall have a writ unto the sheriff for discharging him from coming to the sheriff's torn, or hundred, or leet, or other place, than in the leet or precinct of the hundred where he dwelleth. And the writ is as follows:

GEORGE the third, to the sheriff of *Worcester*, greeting: Whereas it is provided by the common counsel of our realm, that they who have tenements in divers hundreds, have no necessity to the sheriff's torn, except in the bailiwick wherein they shall be dwelling; We command you, that you distrain not *S.* to come to your torn, in our hundred of *I.* contrary to the form of the provision aforesaid, &c.

By the statute of *Marlebridge*, cap. 10. it appeareth, that the sheriff ought for to hold his torn as he has used in the time of *Richard* the third, and *John*, Kings of *England*.

By the writs it seems, that he shall hold his torns in every hundred, &c. And if the sheriff distrain against that statute any man, then he may sue that writ upon the statute, &c. and if he do distrain him after, then he shall have attachment against the sheriff, &c. And the writ is in the following words:

GEORGE the third, to his coroners in the county of *Lincoln*, greeting: If *A.* shall make you secure, &c. then put, &c. *B.* our sheriff of the county aforesaid, that he be, &c. to shew wherefore, whereas by the common counsel, &c. (as above until) dwelling, he the said *B.* or he the said sheriff has distrained the aforesaid *A.* to the torn of him the said sheriff of our hundred of *I.* contrary to the form of the provision aforesaid, and against the form of our mandate to him, before, thereupon directed, as it is said: and have, &c. And in the mean time, cause to be delivered the beasts of him the said *A.* taken on that occasion. Witness, &c.

If a man have lands within the precinct of several leets, or in one county, and he dwells within the precinct of one of them, and he is distrained to come unto another leet where he dwells not, then he shall have such writ unto the sheriff, or bailiffs of the court, &c. that they do not distrain him to come to that leet, within the precinct whereof he dwells not, And the writ is:

GEORGE the third, to his bailiffs of the honour of *C.* in the county of *Lincoln*; or, To the bailiff of *A.* of *B.* in the county of, &c. greeting: Whereas by the common counsel, &c. that they who have lands in divers hundreds, have no necessity to come to the view of frank-pledge, except in the bailiwick where they shall be dwelling; We command you, that you distrain not *A.* to come to the view of frank-pledge in your court, or in the court of your lord of the honour aforesaid, in the county aforesaid, against the form, &c. and the distress, if any, &c.

It appears that if the party be distrained, after he has sued the writ directed unto the sheriff, or bailiffs, that they do not distrain him, that he shall have an attachment against them. But it seems reasonable, that first he have an attachment against the sheriff, or against the bailiffs, who distrained him to come to the *leet* in the *hundred* where he is not dwelling, if he be dwelling within the precinct of another *leet*, because the statute of *Marlebridge* is a prohibition, in itself, and he who does contrary to the statute does wrong unto the party, upon which he may have an attachment, without suing forth any writ.

*Note*, That men or women who have entred into religion, ought not to come unto the *sheriff's torn*, or unto the *leet* of any other without great cause; and if they be distrained for to come, they may have a writ out of the *Chancery* to discharge them, which shall be sued.

GEORGE the third, to the sheriff, &c. Whereas by the common counsel, &c. that men who have entred into religion have no necessity to come to the *sheriff's torn*, (or thus, to the view of *frank-pledge*;) unless their presence be required for some special cause; We command you, that you distrain not the abbot of *I.* to come to your *torn*, (or thus, to the view of *frank-pledge*) in your *hundred* of *F.* against the form of the provision aforesaid, and the distress, &c.

The abbot shall have such writ against the bailiffs of another lord, that they do not distrain him to come to his *leet*.

By the *common law*, parsons of churches shall be compelled or distrained to come to the king's *leets*, or to the *leets* of other lords of the lands annexed to their churches; and if they be distrained so to do, they shall have the following writ.

GEORGE the third, to the sheriff, &c. Whereas according to the custom of our realm, parsons of churches, by reason of their lands and tenements annexed to their churches, ought not to come to the view of *frank-pledge* in our court, or the courts of any other persons whosoever; We command you, that you distrain not *C.* parson of the church of *I.* by reason of his lands and tenements annexed to the church aforesaid, to come to the view of *frank-pledge* in the *hundred* of *N.* contrary to the custom aforesaid; and the distress, &c.

Clerks who are not parsons, nor have benefices, shall not be distrained or compelled to come to *turns* and *leets*, but they shall have a writ to discharge them, in this manner—

GEORGE the third, to the sheriff, &c. Whereas ecclesiastical persons have no necessity to come to the *torn* of the sheriff or to the view of *frank-pledge* (unless their presence be required for some special cause)



cause) according to the form of the provision made by the common council of our realm for men of religion in the like case; therefore we command you, that you distrain not S. parson of the church of N. or chaplain, to come to your *torn* or or to the view of frank-pledge of us in the hundred of I. contrary to the form of the provision aforesaid; and the distress, if any, &c.

Women are not compellable nor distrainable to come to the *sheriff's torn*, nor to *leets*, and if they be distrained, they may sue such a writ as a priest may sue, and thereupon an *alias*, a *pluries*, and *attachment*, &c. because that women are not sworn in *leets*, as men who are of the age *twelve-years* or more are; it is said, that when a woman is *outlawed*, that she is *wayve* and not outlawed; for she was never sworn to the law, &c. But a man is said *outlawed*, because he was sworn to the law; and now for his *contumacy* he is put from the law, and said *outlawed*, as it were *extra legem positus*; and a woman is not so, for she was never sworn to the law.

By the rule of the *register*, two women may sue that writ unto the *sheriffs* or *bailliff's* of the *leet*, that they do not distrain them to come to the *torn* or *leet*, &c.

If the *sheriff* will distrain tenants in *ancient demesne*, to come unto the *leet* or *sheriff's torn*, they may have one writ for them all directed unto the *sheriff*, commanding him that he do not distrain them, &c. to do any suit at the *leet* or *torn* and that writ shall be sued in all their names if they will, as a writ of *monstraverunt* shall be sued: or any of them may sue the writ in his own name, if he be distrained to do such suit. And the writ runs in these words:

GEORGE the third, to the *sheriff*, &c. The manor of D. which is of the ancient demesne of the crown of England, have shewed unto us, that whereas they ought not to come out of the *torn* of the *sheriff* or to the view of frank-pledge out of the liberty of the said manor, unless they themselves or their ancestors, his men and tenants of the same manor, have been accustomed to come in times past; nevertheless you grievously distrain our men aforesaid to come to the *torn* in K. or to the view of frank-pledge in our hundred of K. contrary to the custom hitherto used in the same manor, and do very much unjustly disquiet them upon that occasion, to the manifest prejudice and grievance of them the said men and tenants: And because we will not have any injury done to the men and tenants aforesaid, we command you, if it be so, that then you wholly desist, for the time to come, from bringing such distresses upon them for the cause aforesaid, and permit them to use and enjoy the customs which they have hitherto reasonably used, without interruption or challenge; that repeated complaint may not come to us. Witness, &c.

If the sheriff will distrain a man to do a suit to the *hundred* or *wapentake* twice in the year, to do things appertaining to that *leet*, then he shall have a writ upon the statute of *Magna Charta*, directed to the sheriff; which shall be as follows:

GEORGE the third, to his bailiffs of the *wapentake* of *R.* greeting: Whereas in the great charter of the liberties of *England* it is contained, that no sheriff or his bailiff shall keep his *torn* in the *hundred* but twice in the year, and no where but in due place and accustomed; that is to say, once after *Easter*, and again after the Feast of *St. Michael*, and now from the complaints of the men and tenants of abbot of *C.* we have received information that you, contriving to aggrieve them the said men and tenants in this behalf, do now again grievously distrain them to come to our certain *wapentake* aforesaid, to present there those things which belong to the view of frank-pledge, to the great damage and manifest prejudice of those men and tenants, and contrary to the tenor of the great charter aforesaid; we willing the same charter to be inviolably observed in all things, command you, that you in no wise distrain the said men and tenants to come before us to the *wapentake* aforesaid, to present those things which belong to the view of frank-pledge, contrary to the tenor of the charter aforesaid; and the distress, if any, &c.

It appears, that he shall not distrain to come to the *hundred* to present a thing appertaining to the *leet* but twice in the year, but to do suit at the *hundred*, to do that which appertains to the *hundred-court*, he may distrain them several times to do the suit, and they shall have no remedy, because a suit at the *hundred* is returnable from *three weeks* to *three weeks*.

*The Writ De contra Formam Feoffamenti.*

THE writ *de contra formam feoffamenti* lies, where a man does in-  
feoff another before the statute of *quia emptores terrarum*, to hold of him by *homage*, *fealty* and *rent* by deed, and afterwards he will distrain for suit or other services to be done unto him; he who was infeoffed, or his heir, shall have this writ of *contra formam feoffamenti*, &c.

This writ may be directed unto the lord himself, or unto his bailiffs, commanding them that they do not distrain him against the form of his grant; and this writ is a *prohibition* in itself. If the lord and bailiffs do contrary to the writ sent to them, the tenant thereupon shall have an *attachment*, and a *distress*. And the form of the writ is,

GEORGE

GEORGE the third, to *I.* or to the bailiff of *I.* greeting: Whereas by the common counsel of the realm, &c. it is provided that none by reason of their tenements be distrained to do suit at the court of their lords, unless they are specially bound to that suit by the form of their feoffment, or they or their ancestors holding those tenements, have been accustomed to do it before the first voyage of our lord king *Henry* into *Britain*: We command thee or you, that you or ye, do not detain *A.* to do suit at your court of *I.* or at the court aforesaid, of our lord of *N.* against the form of the provision aforesaid: And the distress, if any, &c.

No person shall have this writ of *contra formam feoffamenti*, but he who was infeoffed, or his heirs who are privies to the deed: but if the feoffee, to whom the lands were given to hold of the feoffor and his heirs by the deed, make a feoffment over to hold of the chief lord, &c. the feoffee shall not have this writ *de contra formam feoffamenti*, because he is not party or privy to the deed, but he shall rebut the lord by that deed, to claim other services than are mentioned in the deed. And that writ is a *prohibition* unto the lord and his bailiffs; and if he distrain after the writ delivered to him, the tenant shall have an *attachment* against him, and thereupon he shall recover his damages if it be found for him, &c. and the process is *prohibition*, *attachment* and *distress*.

The rule in the *register* is, if any for suits undue against the form of any statute, of any to be done, be distrained, he may have a *prohibition* against the distrainer, and after an *attachment* if need be: Nor can he be attached, unless a *prohibition* be first directed unto him.

The opinion of *Parnis* is, *P. 10 Ed. 3.* That if a man gives land in *frank-marriage*, or in *frank-almoign*, that the donor shall not have a writ of *contra formam feoffamenti*; nor his heirs, because there are not any services expressed in the deed, for which reason he is out of the statute of *Marlebridge*, *cap. 9.* but they may rebut the lord by such deed.

If the lord confirm the estate of the tenant to hold by lesser services, &c. the tenant shall have a writ of *contra formam feoffamenti*, if he be distrained for more services than there are specified in the deed of confirmation. *M. 16 Ed. 3. Avowry 243. 30 Ed. 3. 13. per Seton, &c.*

So if in a writ of *contra formam feoffamenti*, the person did count upon the deed, and the detainer demanded *oyer* thereof, and could not have it. *M. 3 Ed. 2. Action sur le case 5.*

The writ of *contra formam feoffamenti* lies only against the feoffor and his heirs.

The



*The Writ of Cessavit.*

**T**HE writ of *cessavit* lies in divers ways: for one writ is when there is a lord and tenant, and the tenant will not pay his rent, nor do his services, as suit, &c. to his lord as he ought to do, nor has sufficient goods or chattels on the lands to be distrained for the rent or services behind; but suffers the lands to lie fresh, not occupied for *two years* following together; then the lord of whom the lands are held may have this writ against the tenant, and if it be found for him, he shall recover the land if the tenant will not find sureties to pay the rent then after. The writ is:

GEORGE the third, to the sheriff, &c. Command *A.* that, &c. he render to *B.* one messuage, &c. which he the same *A.* holds of him by certain services, and which ought to revert to him the said *B.* by form of the statute provided by the common counsel of our realm, because the aforesaid *A.* has now ceased in doing the aforesaid services for *two years*, as he saith, &c.

The following writ is given by statute of *West. 2. cap. 21.* and may be brought in the *per*, *cui* and *post*.

The *Per* thus:

Into which the same *A.* &c. but by *C.* who demised it to him, who held it of the aforesaid *B.* by certain services, and which ought to revert to him the said *B.* &c. (until) because the aforesaid *A.* or, because the aforesaid *C.* has now ceased in doing the aforesaid services for two years.

It ought to be alledged in the writ by whom the *cessur* was.

When in the *Per* and *Cui* thus:

Into which, &c. but by *C.* to whom *D.* did it, who held it of the aforesaid *B.* &c.

In the *Post* thus:

Into which, &c. but after the demise which *A.* who held it of the aforesaid *B.* by certain services, made thereof to *A.* of *E.* and which ought to revert to him the said *B.* because the aforesaid, &c. as he saith, &c. and whereof he complains, &c. and unless, &c.

There is another form of a writ of *cessavit*, without making mention of any entry, in the following form :

COMMAND *W.* of *F.* and *A.* his wife, that, &c. they render to the abbot of *S.* two messuages which *I.* of *B.* held of him by certain services, and which ought to revert to him the said abbot, &c. because the said *W.* and *A.* have now ceased in doing, &c.

The writ of *cessavit* lies for a suit of court; but the donor in tail shall not have a writ of *cessavit* against the tenant in tail: but if a man maketh a gift in tail, the remainder over in fee unto another, or unto the right heirs of the tenant in tail, in that case the lord of whom the lands are held *immediate* shall have a writ of *cessavit* against the tenant in tail, because that he is tenant to him, &c.  
33 H. 6. 53. 28 Ed. 3. 9. 19 Ed. 3. Cefs. 30.

If a man cease to pay his rent and services for *two years*, and inclose the land, so as the lord cannot distrain, if he break not the gates or the hedges of the land which make the inclosure, the lord shall have a writ of *cessavit*, although the tenant has sufficient cattle upon the land to be distrained for the rent. For the land ought to be open, and also there ought to be sufficient to distrain for rent, &c. But the land is not open to his distress, &c. and so open to his distress is a good plea, without saying more in such case. *M. 2 H. 4. 5. 2. 30 H. 6. Cefs. 7.*

If the cattle of a stranger do escape into the lands, those cattle are not sufficient or *quert* to his distress: but if they be the tenant's cattle, it is otherwise. 40 Ed. 3. 11. 50 Ed. 3. Cefs. 10.

If three men hold by one intire rent, as by a horse, and the lord does recover two parts of the land against two of them, and the third finds sureties, &c. the whole rent is extinct by that recovery. 14 Ed. 3. Cefs. 28. 13 Ed. 3. 47. 10 H. 4. 1.

A man shall not have one writ of *cessavit* for lands which are held by several services; but he ought to sue several writs. 20 Ed. 3. Cefs. 28. 11 Ed. 2. Cefs. 50. 14 Ed. 6. 25. 28 Ed. 3. 9. 45 Ed. 3. 27. 20 H. 6. 46.

If the lord does distrain pending his writ of *cessavit* against his tenant, the writ shall abate.

The lord shall have a writ of *cessavit* against his tenant for life, where the remainder is over in fee to another. 20 Ed. 3. Cefs. 32, 33.

33, 38. 48 Ed. 3. 4. 12 Ed. 4. 7. 5 Ed. 3. 70. 6. Ed. 3. 45.  
4 Co. 11. 6. 23 Ed. 3. 21. Cess. 21.

The quantity of the service is not traversable in writs of *cessavit*, but the same shall be taken by protestation.

The *seisin* of the service is not traversable in a writ of *cessavit*; but in a writ of *cessavit* generally, the tenure is traversable.

The aunt and niece shall not join in a writ of *cessavit* for a cesser made before the title accrued to the niece. But for a cesser in both their lives, they shall join in a writ of *cessavit*; otherwise of joint-tenants. N. Br. 139.

A man may have a writ of *cessavit* against several persons, and several tenants, by several *præcipes*, &c. but not by one *præcipe*.

A writ of *cessavit* does not lie for him in the reversion against a tenant for life, nor against a tenant in *dower*, but against a tenant by the *curtesy* by the lord *paramount*; because he is tenant to the lord *paramount*. But a tenant by the *curtesy*, tenant in *dower*, or tenant for life, shall have a *cessavit* against the tenant who ceases.

It is a good plea in a writ of *cessavit* to say, that he did not cease for two years before the writ was brought.

On the opinion of *Thorpe* and *Hankford*, a man shall have a writ of *cessavit* against an abbot or a prior of the lands of their foundation; but I know no difference but that the lord shall have a writ of *cessavit* against an abbot or a prior as well as against others, of the lands which he holds of them by rents or other services; but for the lands which they hold in *frank almoigne* a writ of *cessavit* does not lie for not doing the service, neither does a writ of *cessavit* lie for not doing *homage* or *fealty*.

If a man holds lands in several counties by one tenure and one service, if he cease, &c. a writ of *cessavit* does not lie. M. 18 Ed. 3. tit. Affize.

There is another writ of *cessavit* grounded on the statute of *West.* 2. cap. 41. That if a man give land unto a religious house, or unto another, to find a chaplain to sing divine service, or to find certain tapers to burn before such an image, or to distribute certain bread and beer every week unto poor men. Now if these services be not done for two years, nor sufficient distress on the lands for the time to distress for these services, then he or his heir who gave the lands, shall have a writ of *cessavit* in these words:



GEORGE the third, to the sheriff, &c. Command S. Bishop of Worcester, that, &c. he render to H. Earl of D. one messuage, &c. in the town of W. which M. lately Earl of D. brother of the aforesaid H. whose heir he is, gave to W. some time bishop of W. and his successors, bishops of the place aforesaid, to celebrate yearly the obits of I. the brother, and B. the mother of the aforesaid T. and also the obits of the same T. and R. of H. after their decease; and which ought to revert to the aforesaid Earl, by form of, &c. because the aforesaid bishop has now ceased for two years in celebrating the obits aforesaid, as he saith, &c. Witness, &c.

If for a chauntry, it is in the following form:

COMMAND the abbot of N. that, &c. he render to B. and C. his wife, one messuage, &c. which R. the great grand-father of the aforesaid C. whose heir she is, demised to E. some time abbot of N. or to the same abbot and his successors, abbots of N. to find a certain canon for celebrating divine services for the souls of the ancestors and successors of the same R. in the abby of N. and which ought to return to the aforesaid B. and C. by the form of the statute, provided by the common counsel of our realm, in case of such demise, because the said abbot has now ceased in finding the aforesaid canon for two years, as they say; and unless, &c.

The like writ may be sued against a person for lands given to his predecessors in fee, to say divine service in such a chapel from *three weeks* unto *three weeks*.

A man shall have this writ for lights, or for drinking for the poor, or other alms-deeds, if the said alms-deeds be withdrawn for *two years* together.

Where a religious man, or other spiritual person brings the writ of *cessavit*, it shall not be said in the writ, *quod clamat esse jus & hereditatem suam*, &c.

A man shall have a writ of *cessavit* for not doing of several things which he ought to do, in these words:

COMMAND A. &c. that, &c. he render to B. &c. which T. the great grand-father of the aforesaid B. gave to W. some time rector of, &c. and his successors, rectors of, &c. to find a certain chaplain to celebrate divine service for the souls of the ancestors of the same T. in the church of, &c. and two wax lights to burn the whole time wherein that mass is said; and which ought to revert to him the said B. because the aforesaid, &c. has now ceased for two years in finding the aforesaid chaplain in wax lights, &c.

And

And the like writ may be made in the *Per*, *Cui* and *Post*.

There is another writ of *cessavit* founded upon the statute of Gloucester, c. 4. where a man gives certain lands in fee-farm to find him certain *estovers* to burn in the winter, &c. or clothing, or to pay the fourth part of the value of the land yearly, and afterwards he ceases, and lets the land lie fresh, not manured for *two years* together; then he or his heir who gave the land, shall have the writ of *cessavit* which follows: viz.

GEORGE the third, to the sheriff, &c. Command *A.* that, &c. he render to *B.* one messuage, &c. which the same *B.* demised to him in fee-farm, rendering therefore by the year to him the said *B.* the third part or fourth part of the true value of the messuage aforesaid, and which ought to revert to him by the form of the statute thereupon provided by the common counsel of our realm; because the aforesaid *A.* has now ceased in the payment of the aforesaid fee-farm for two years, as he saith; and unless, &c.

In the *Per*, thus:

AND into which the same *A.* has not entry, but by *E.* the father of the aforesaid *B.* whose heir he is, who demised it to him in fee-farm. Or thus, in the *Per* and *Cui*: But by *D.* to whom the aforesaid *B.* or *C.* the father of the aforesaid *B.* whose heir he is, demised it in fee-farm, &c.

In the *Post* thus:

But after the demise which the aforesaid *B.* *C.* father of the aforesaid *B.* whose heir he is, thereof made to *D.* in fee-farm, &c. has ceased, &c. as he saith, and whereof he complains, &c. and unless, &c.

If a woman give lands in fee-farm, rendering to her the moiety or the third part of the value, and afterwards taketh husband, and the tenant ceases for *two years*, and suffers the land to lie fresh, and does not pay the rent, the husband or wife shall have a writ of *cessavit*, and the writ shall suppose which to the aforesaid *A.* and *B.* his wife ought to revert, and not to the wife only.

*Note*, These gifts in fee-farm, being to render the third part, or the fourth-part, or to find a chaplain to say divine service, or to find him clothing or *estovers*, or to distribute, &c. upon which a writ of *cessavit* lies, it behoves that this were made before the statute of *quia emptores terrarum*, &c. upon which feoffments a tenure is reserved and implied in the gift. But if a man at this day, after the statute

of *quia emptores*, will give lands in fee-farm to render the third or the fourth part of the value of the land, or to find a chaplain, &c. if the tenant ceases, &c. neither the donor nor his heir shall have a writ of *cessavit*; because there is not any tenure betwixt them. *M. 45 Ed. 3. Cess.*

If a man giveth lands in tail at this day to find a chaplain, or to render a third part of the yearly value, or to find *estovers* yearly, if the tenant ceaseth of these services, it is a doubt whether the donor shall have a writ of *cessavit* to recover the lands.

It seems that the donor shall have a writ of *cessavit*, for a writ of *cessavit* is given by the statute of *Westm. 2. cap. 41.* for lands given to find a chaplain, or to find tapers, or to distribute alms to poor men. But then it seems that the same is intended of gifts in fee-simple; because that the statute of *Westm. 2. c. 41.* saith, That an action shall lie for the donor or his heir to demand the lands so given in demesne as it is appointed in the statute of *Gloucester* of tenements demised to do or render the fourth part of the value, or more, and upon which feoffments a tenure was reserved and implied, because the statute of *quia emptores*, &c. was made after the statute of *Westm. 2.*

And also, before the statute of *quia emptores terrarum*, if a man made a feoffment in fee, and did not say of whom the feoffee should hold, &c. then the feoffee ought to hold of the feoffor and his heirs. By which it appears, that if a man, at the time of the making of the statute of *W. 2.* gave lands to hold in fee-farm, rendering the value, or the third part, &c. that he held of the feoffor and his heirs, although that no tenure was expressed therein. And the statute of *Gloucester* was made *anno 6 Ed. 1.* and the statute of *Westm. 2.* made *anno 30 Ed. 1.* and the statute of *Quia emptores terrarum*, was made *18 Ed. 1.* And therefore if a man makes a feoffment in fee at this day, to find tapers burning, or to render the third part of the value, or the like services, he shall have an *action of covenant* upon that feoffment, if it be made by deed indented, and no other remedy for the same services.

If land be given before the time of memory, to find a chaplan to sing in his chapel within his manor every week: now by the statute, no man shall have a writ of *cessavit* for the lessor of such service, but the donor or his heir; but upon the special matter, he shall have a special writ for him who is seized of the manor, if he and his ancestors have been seized of the manor time out of mind, against him who ought to do service. *T. 7 H. 2.*



A writ of *cessavit* does not lie against an abbot or prior for a cessor of services of lands which they hold in *frank almoigne*, because no service certain is expressed in the gift. Also it appears, before the statute that the lord could not have a writ of *cessavit* against the tenant, but that he might seize the lands for the arrearages of the rent or services by judgment of the court, if it were found that they were behind. 20 H. 3. But at this day he cannot do so, but bring a writ of *cessavit*, 10 H. 3. Cess. 60.

*The Writ De deonerando pro Rata Portione.*

**T**HE writ *de deonerando pro rata portione* lies, where a man holds ten oxgangs of lands by fealty, and twenty shillings rent of the King, and the tenant does alien one part, or one oxgang to one man, and another oxgang to another man in fee, and so to others the rest of the oxgangs, and the sheriff or the King's officer will distrain one for the said tenants for the whole rent. Then he who is distrained may sue forth a writ in the following form :

GEORGE the third, to the sheriff, &c. greeting: *I. A.* and *W.* have shewed unto us, that whereas four oxgangs of land with the appurtenances in *E.* which were *B.*'s, and which are holden of us by the service of thirteen shillings by the year, to be rendered by the hands of our sheriff of the county aforesaid for the time being, are come to the hands of the said *I. A.* and *W.* and also to the hands of *T.* by their purchase, and although they the said *I. A.* and *W.* only hold two oxgangs of land thereof, you nevertheless exact the said yearly thirteen shillings of the said *I. A.* and *W.* omitting the said *T.* who holds the other two oxgangs of land, and compel them the said *I. A.* and *W.* by various distresses, to render to us the said yearly thirteen shillings, to the great expence and grievance of them the said *I. A.* and *W.* whereupon they have besought us to apply a fit remedy for them : and because we will not that the said *I. A.* and *W.* be injured in this matter, we command you, that if upon inquest upon the premises to be made, or by other lawful means it shall appear to you, that the aforesaid four oxgangs of land are held of us by the service of thirteen shillings only, and that they the said *I. A.* and *W.* hold two oxgangs of land thereof, and the said *T.* the other two oxgangs of land, the residue as it is said, then having received of the said *I. A.* and *W.* those services which to us belong, for the proportionate share of their holding, which they hold thereof, you permit them to be quiet of the rest of the service. *Provided always*, that the said residue of that service be levied upon the said *T.* to our use, as is just. Witness, &c.

It

It appears by that writ, that notwithstanding the statute of *Quia emptores terrarum*, that if the King's tenant do alien part of the lands held of the King, yet the King or his minister may distrain one of the tenants for the whole rent, &c. although that the statute saith, *quod feoffatus tenet pro particula illa, &c.* But it seems that the King is not bound by the statute, but a common person is. For if a man holds twenty acres of land by fealty, and twenty shillings rent of another man, and he aliens one acre to one in fee, and another acre to another in fee, the lord shall not distrain the alienee but for the rate and value of the land which he has purchased, and shall not distrain one alienee for the whole rent, &c. But if the King's tenant doth alien part of the lands which he holds of the King, without licence, then the King may chuse whether he will take the alienee for his tenant or not; and then it is a question whether the alienee shall have such writ.

But, if the alienee does pay a fine to the King for the alienation, it is reason that he have such writ as before, if he be distrained for the whole rent which issueth out of all the lands, whereof he has purchased but part, &c.

The like writ as before is awarded to the Queen's officers where they distrain one tenant for the whole rent, where he holds but part of the lands, and several other tenants hold the residue thereof.

If a man who holds one hundred acres of land, ought by his tenure thereof to repair such a bridge, if he alien in fee, twenty acres to one, and twenty acres to another, and one of them only be distrained to make the reparations upon a presentment found; he shall have a special writ to the King's officers, that they do not distrain him, but according to the rate of his proportion of the land which he holds. And the writ is:

GEORGE the third, to his beloved and faithful *I. of T.* and his companions our justices, assigned to enquire of the defects of the great bridge of *C.* and to cause those defects to be repaired and amended, greeting: It is shewed to us, on the behalf of *R.* grievously complaining, that whereas it is presented before you, that the same *R.* holds four hides of land with the appurtenances in *D.* in the county aforesaid, which have been anciently accustomed to be charged towards the reparation of the said bridge.

Or thus:

Which are asserted to be bound to the reparation of the said bridge; and although he only holds twenty acres of land of the said four hides of land, and certain others hold all the residue of the said four hides; never-

nevertheless you, by reason of the presentment aforesaid, endeavour to levy seven pounds (at which sum the said four hides of land are apportioned for the reparation of the said bridge) upon the said R. as if he wholly held the four hides of land aforesaid, whereas he does not hold the same, omitting the other tenants aforesaid, and cause him upon that occasion to be grievously distrained and much disquieted, to the great damage of him the said R. and the manifest oppression of his estate, whereupon he has besought us to provide him a remedy; and because we will not have him the said R. to be unduly charged in this matter, we command you, that if by inquest to be taken thereon, in the presence of him the said R. if he will be present, or by other lawful means, it shall appear to you that he the said R. holds but twenty acres of the said four hides of land only, and the rest of the same four hides of land are in the hands of other tenants, as it is said, then cause to be levied the said seven pounds, at which the said four hides of land are so assessed, for the reparation of the bridge aforesaid, as well of the said R. as of the said other tenants, to wit, of every one of them, according to the proportion of his holding of the said four hides of land, sparing nobody in this matter, nor charging any tenant of the same unduly beyond the proportion of his holding, notwithstanding the said presentment. And if any thing be levied of the said R. unjustly beyond the proportion of his holding, cause it to be restored to him without delay. Witness, &c.

There is another form of writ for the King's tenant, where he is distrained for all the rent, where he holds but part of the lands out of which the rent ought to be paid.

*Note.* The statute of 34 Ed. 3. cap. 15. That if the King's tenant in capite aliens his lands in fee without licence, the alienation shall not bind the King, but that he shall have his prerogative of these lands and tenements.

### *The Writ of Diem clausit extremum.*

**T**HE writ of *diem clausit extremum*, properly lies where the King's tenant who holds of him in capite, as of his crown by Knight's service, or in socage, dies seized, his heir within age, or of full age; then that writ ought to issue forth, and the same ought to be at the suit of the heir, &c. For upon that, when the heir comes of full age, he ought for to sue livery of his lands out of the King's hands. And the writ is in these words:

GEORGE



GEORGE the third, to his beloved *W.* of *K.* his escheator, in the county of *Devon*, greeting: Because *W.* of *S.* who held of us in chief is dead, as we have received information; We command you, that without delay, you take into our hand all the lands and tenements of which he the said *W.* was seized in his demesne as of fee, in your bailiwick, on the day when he died, and cause to be safely kept, until we shall command you some other matter thereupon; and by the oath of honest and lawful men of your bailiwick, by whom the matter may be better known, enquire diligently how much lands and tenements the said *W.* held of us in chief, as well in demesne as in services in your bailiwick, on the day when he died, and how much of others and by what services, and how much those lands and tenements are worth by the year in all issues; and on what day the said *W.* died, and who is next heir, and of what age; and the inquisition thereof distinctly and openly made, send to us without delay in our *Chancery*, under your seal, and the seals of those by whom it shall be made, and this writ. Witness, &c.

If the King had a ward, and afterwards one who holds of the ~~King~~ his lands by knight's service dies, his heir within age, or of full age; then a writ of *diem clausit extremum*, after his death, shall issue in this form:

GEORGE the third, to his beloved &c. Because *I.* of *S.* who of the inheritance of *W.* of *O.* deceased, (who held of us in chief, being within age and in our wardship) held by knight-service, is dead, as we have received information; We command you, that, &c. all the lands and tenements, &c. and by oath, &c. how much lands and tenements the said *I.* held of the inheritance aforesaid, and who is his next heir, &c. (as above.)

If the heir dies, being in the custody of the King, then shall issue another writ of *diem clausit extremum* in this form:

GEORGE the third, &c. Because *R.* of *H.* son and heir of *H.* deceased, who held of us in chief lately, while he was within age and in our wardship, died, as we have received information, &c. We command you, that by the oath, &c. you inquire what lands and what tenements by the death of the said *I.* and by reason of the minority of the heir of the said *I.* are come to our hands, and so are in our hand, and how much thereof are held of us in chief, and how much of others, and by what service, and how much, &c.

If the King's tenant dies, who holds by knight's service, and his wife be endowed, and the King has the wardship of the lands for the nonage of the heir, and afterwards the tenant in dower dies, the lands being in ward in the King's hand; then a writ of *Diem clausit extremum* shall be sued out in this manner:

GEORGE

GEORGE the third, to his beloved N. of B. mayor of his city of London, and to his escheator in the same city, greeting: because E. who was the wife of I. of B. (lately deceased) who held certain lands and certain tenements of us in dower, of the inheritance of the said I. some time her husband, is dead, as we have received information; We command you, that, &c. all the lands and tenements which the same B. so held in dower of the inheritance of the said I. in your bailiwick, &c. by the oath, &c. you diligently inquire what lands and tenements the same E. so held in dower of the said inheritance in your bailiwick on the day when she died, and how much thereof holden of us in chief, and how much of others, and by what service, &c.

Otherwise after the death of tenant for life of lands, of which the King has the reversion in ward.

Because A. who held certain lands and certain tenements of the inheritance of E. cousin and heir of H. deceased, who held of the King in chief, being within age, and in the wardship of the King, held for his life, is dead, &c. We command you, &c. or thus: Because A. who held certain lands, and certain tenements of us by the law of England, of the inheritance of M. his wife lately deceased, is dead; We command you, &c.

There are divers other forms of writs after the death of the tenant for life, or tenant in dower.

If the King has the temporalities of the bishop in his hands, and afterwards one who holds by Knight's-service of these temporalities dies his heir in ward to the King, the writ of *diem clausit extremum* shall be in such form:

GEORGE the third, &c. Because B. who held of the Archbishopric of Canterbury, (being void in our hand) by Knight's-service, is dead, &c. We command you, &c. of which the said A. was seized in his demesne as of fee, and held of the said archbishopric, without delay, &c.

If the King has an idiot in his custody, and afterwards the idiot dies, the writ of *diem clausit*, &c. shall be thus:

GEORGE the third, &c. Because B. of C. lately a fool and an idiot, whose lands and tenements by reason of the said ideocy are in our hands, is dead, as we have received information; We command you, that by the oath of, &c. you diligently inquire what lands and what tenements, by reason of the ideocy of the said B. were

taken into our hand, and are yet in our hand, and of whom or of what persons they are held, and by what service, and how much those lands are worth, &c. and who is next heir, &c. and the inquisition, &c.

If a writ of *diem clausit extremum* be sent to the escheator, and the escheator be removed from his office, or dies before he make the inquisition, &c. then shall issue forth another writ of *diem clausit extremum*, which shall be such :

GEORGE the third, &c. Whereas we being lately given to understand that *I. of B.* who held of us in chief, is dead, &c. We command our beloved *W. of O.* lately our escheator in the county aforesaid, that, &c. all the lands and tenements, &c. (as before, charging what ought to be charged) and the said *W.* is now removed from the said office, by which the execution of our said writ cannot be done, we willing to be certified upon the premises, command you, that by the oath, &c. you diligently make inquisition upon the premises, and the same distinctly, &c. Witness, &c.

There is another form of a writ in this manner, viz.

GEORGE the third, to his beloved, &c. Whereas we being lately given to understand, that *I. of B.* who held of us in chief, is dead, command our beloved and faithful *H. of B.* lately our escheator in the same county, that all lands, &c. he should take into our hand without delay, &c. until we should thereupon command some other matter, and by the oath, &c. should inquire what land, (as in the first writ;) and the said *H.* before the said writ was executed, was removed from the said office. We, willing to be certified more fully upon the premises, command you, that you make diligent inquisition upon the said articles and every of them, and the same distinctly and openly made, &c. (as above.)

If the first escheator do make inquiry by force of the writ, and afterwards dies before the inquisition be returned into the *Chancery*, &c. then a writ of *certiorari* shall be awarded against his executors, to certify the same inquisition; because it is a good matter of record when it is found, and the jurors have put their seal unto the same.

If the King's tenant, who holds of him by Knight's-service, dies his heir within age, and no writ is awarded within one year after his death, then, after the year is past, a writ called a *mandamus* shall issue forth; and that writ does not vary in words from the writ of *diem clausit extremum*, and the writ is such :



GEORGE the third to his beloved *W. of E.* his escheator in the county of *B.* greeting: We command you, that by the oath of honest and lawful men of your bailiwick, by whom, &c. you diligently inquire what lands and what tenements *I. of B.* held of us in chief, as well in demesne, as in service, in your bailiwick on the day when he died, and how much of others, and by what service, and how much these lands and tenements are worth by the year in all issues, and what time the said *I.* died, and who is his next heir, and of what age, and who, or what persons occupied those lands and tenements, from the time of the death of the said *I.* and perceived the rents and profits thereof, and by what title, and how and in what manner, &c. and the inquisition, &c.

And note, That if a man sue a writ of *diem clausit extremum*, it ought to be used within the year, and after the year he shall have that writ of *mandamus*, and not a *diem clausit extremum*. And if a man sue forth a writ of *diem clausit extremum*, and he loseth the writ, or the same is taken from him with force against his will, he shall not have a new *diem clausit*, &c. But if he has a *diem clausit*, &c. and the heir be found within age, and that the King has title to him, because that his ancestor held of the King at the time of his death by knight's service, and afterwards the heir dieth, being in ward to the King, and no writ of *diem clausit extremum* within the year after his death; yet there a *mandamus* shall not be avoided after the year of the death of the ward, but a new writ of *diem clausit extremum*, because the heir died in ward to the King.

Or if the King's tenant who holds of the King by knight's service in chief dieth, the heir may have a special commission directed to certain persons, to inquire what lands, &c. his father held the day of his death, &c. and that special commission shall be as good for the heir as a writ of *diem clausit extremum* after the death of his ancestor. And upon such commission and inquisition taken thereupon, and found and returned in the *Chancery*, the heir at full age shall have his livery as well as upon a writ of *diem clausit extremum* sued forth, &c. But upon a general commission to inquire of wards, &c. the law is otherwise; for the heir upon such a commission, and inquisition returned, shall not have livery.

When the heir, who is in ward to the King by reason of lands held *in capite*, cometh to his full age, then he shall have a writ directed to the escheator, to prove his age, before he shall have livery of his lands; and the writ is such:

GEORGE the third, to his beloved *I. of B.* his escheator in the county of *B.* greeting: Because *A. of B.* who married *M.* the sister and one of the heirs of *R.* deceased, who held in chief of lord

*Edward*, lately King of *England*, our grandfather, says, That the said *M.* is of full age, and prays of us the lands and tenements which are of the inheritance of her the said *M.* (and one part whereof are in our hand, and another part in the custody of *I.* of *H.* under the commission of our said grandfather, until the lawful age of the said heir) to be rendered to him; wherefore we, willing that the said *M.* who was born at *G.* in the county of *N.* and was baptized in the church of the same town, as it is said, shall prove her age before you; command you, that at a certain day and place which you shall appoint for this purpose, you take that proof by the oath as well of knights as of honest and lawful men of your bailiwick, by whom that proof may be taken, and the truth of the age of her the said *M.* better known and inquired of, and give notice to the said *I.* that he may be then there to shew, if he has, or knows any thing, to say for himself, why to the said *A.* and the said *M.* as to her who is of full age, (if she be of full age) we ought not to render the lands and tenements aforesaid, and without delay send that proof so taken to us under your seal, and the seals of those by whom it shall be taken, and this writ. Witness, &c.

And by that writ it appeareth, that the writ *de ætate probanda* shall be directed unto the escheator of the county where the heir was born, and not where the lands of the heir lie; but yet it seemeth reasonable that he may sue it where the lands lie; for it may be that he was born where the King's writ doth not run, or in *Ireland*, or beyond the sea, as in *Calais*, &c.

There is another form of a writ, thus:

**GEORGE** the third, &c. Because *M.* of *P.* son and heir of *F.* deceased, who held of us in chief, says, that he is of full age, and prays of us the lands and tenements which are of his inheritance, and in our custody, until the lawful age of the said heir, to be rendered to him; wherefore we will, &c. (as before, until) may be better known and inquired into, &c. and, &c. send that proof, &c. (as before.)

There is another form when the King committeth the ward during his nonage, then when he will sue an *ætate probanda*, he ought to make mention of the same commitment.

And if a man be in ward unto the King by reason of the temporalities of a bishoprick in the King's hands, when the heir cometh of full age, he ought to sue forth an *ætate probanda*; and the writ shall mention the whole matter; and yet he doth not hold of the King *in capite*,

And

And when the heir has proved the age, and the writ is returned, then he ought to do his homage to the King, or agree with the King for the respiting of the homage, and he shall have such writ :

GEORGE the third, to the same escheator : Know you, that we have taken homage of *I.* of *H.* son and heir of *B.* of *H.* deceased, of all the lands and tenements which the said *B.* his father held of us in chief, on the day when he died, and have rendered to him those lands and tenements ; and therefore we command you, that having received security of the said *I.* for his reasonable relief to be paid to us at our *Exchequer*, you cause him the said *I.* to have full seisin of all the lands and tenements aforesaid, and whereof the said *B.* his father was seised in his demesne as of fee in your bailiwick on the day when he died, and which by reason of the death of the same *B.* are taken into our hand ; saving the right of every one, and saving to *M.* who was the wife of *B.* her reasonable dower, falling to her of the said lands and tenements, according to the law and custom of our realm of *England*, and by us to be assigned. Witness, &c.

The writ aforesaid lieth, where the heir was of full age at the time of the death of his ancestor, and such his livery ; but if the heir was in ward, and has proved his age, then he shall have a writ thus :

GEORGE the third, &c. Because *N.* of *E.* son and heir of *B.* of *C.* deceased, who held in chief of Lord *Edward*, late King of *England*, our grandfather, has sufficiently proved his age before you, as it is found by the proof taken by our command and returned into our *Chancery* ; we have taken homage of the said *N.* of all the lands and tenements which the said *B.* his father held of our said grandfather in chief on the day when he died, and have rendered him those lands and tenements ; and therefore we command you, that you cause him the said *N.* to have full seisin of all the said lands and tenements, and of which the said *B.* his father was seised in his demesne as of fee in your bailiwick on the day when he died, and which, after the death of the said *B.* were taken into the hand of our said grandfather, and so taken are in our hand, saving the right of every one, &c. Witness, &c.

And if the husband seized in fee in right of his wife be outlawed of felony, for which the lands came into the King's hands, and afterwards the husband who is outlawed dieth ; a writ of *diem clausit extremum* shall be awarded, which shall be such :

BECAUSE



BECAUSE *A.* is dead, whose lands and tenements which he held, of the right and inheritance of *N.* lately his wife, yet living, came to the hands of Lord *Edward*, lately King of *England*, the fourth after the conquest, by reason of a certain outlawry proclaimed against him for a certain felony, whereof he was indicted, as it is said, and were in the hand of Lord *Henry*, our father and so are in our hand, &c. We command you, that by the oath, &c. you inquire what lands and what tenements by reason of the said felony, came to the hand of the said late King, and yet are in our hand, and of whom or of what persons they are holden, and by what service, and how and in what manner, and how much those lands and tenements are worth by the year, in all issues, according to the true value thereof, and who or what, has or have occupied those lands and tenements, from the time of the perpetration of the said felony, and has or have received the issues and profits thereof, by what title, and how and in what manner. And the inquisition, &c.

E. E. B. 26.

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